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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
)
PLAINTIFF,) NO. CR-11-0573 JSW
)
)
VS.) THURSDAY, JULY 10, 2014
)
)
WALTER LIEW AND) OAKLAND, CALIFORNIA
USA PERFORMANCE)
TECHNOLOGY, INC.,)
)
DEFENDANTS.) SENTENCE
)

BEFORE THE HONORABLE JEFFREY S. WHITE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

MELINDA L. HAAG, ESQUIRE
UNITED STATES ATTORNEY
450 GOLDEN GATE AVENUE, BOX 36055
SAN FRANCISCO, CALIFORNIA 94102
BY: JOHN H. HEMANN,
PETER B. AXELROD,
RICHARD S. SCOTT,

ASSISTANT UNITED STATES ATTORNEYS

FOR DEFENDANT:

KEKER & VAN NEST
633 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111
BY: STUART L. GASNER, ESQUIRE
SIMONA AGNOLUCCI, ESQUIRE
KATHERINE LOVETT, ESQUIRE

ALSO PRESENT:

JESSICA GOLDSBERRY, U.S. PROBATION

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 THURSDAY, JULY 10, 2014

10:03 A.M.

2 P R O C E E D I N G S

3 **THE COURT:** GOOD MORNING, EVERYBODY. PLEASE BE
4 SEATED.

5 PLEASE CALL THE CASE.

6 **THE CLERK:** CALLING CASE NUMBER 11-573 UNITED STATES
7 VERSUS WALTER LIEW AND UNITED STATES VERSUS USA PERFORMANCE
8 TECHNOLOGY, INC.

9 COUNSEL, PLEASE STEP FORWARD TO THE PODIUMS AND STATE YOUR
10 APPEARANCES.

11 **MR. HEMANN:** GOOD MORNING, YOUR HONOR. JOHN HEMANN
12 PETE AXELROD AND RICHARD SCOTT FOR THE UNITED STATES.

13 **THE COURT:** GOOD MORNING.

14 **MR. GASNER:** GOOD MORNING, YOUR HONOR. STUART
15 GASNER, ALONG WITH SIMONA AGNOLUCCI AND KATHERINE LOVETT FOR
16 DEFENDANT MR. WALTER LIEW AND DEFENDANT USAPTI.

17 **THE COURT:** GOOD MORNING.

18 EVERYBODY CAN BE SEATED AT THIS POINT. I WILL CALL PEOPLE
19 UP AS NEEDED. AND I WILL ASK THE PROBATION OFFICER TO BE
20 SEATED AS WELL DURING THE PROCEEDINGS.

21 SO WE ARE OBVIOUSLY HERE FOR THE IMPOSITION OF SENTENCE ON
22 MR. LIEW AND USAPTI. THE FIRST QUESTION I WANT TO ASK
23 GOVERNMENT COUNSEL IS, HAS THE GOVERNMENT RECEIVED ALL OF THE
24 PRESENTENCE REPORTS IN BOTH CASES AS WELL AS ALL OF THE
25 SENTENCING MEMORANDA AND EXHIBITS?

1 **MR. HEMANN:** I BELIEVE SO, YOUR HONOR, YES.

2 **THE COURT:** DOES THE GOVERNMENT HAVE ANY ADDITIONAL
3 OBJECTIONS TO THE ONES IT'S ALREADY MADE TO THIS COURT?

4 **MR. HEMANN:** NO, YOUR HONOR.

5 **THE COURT:** MR. GASNER, SAME QUESTIONS TO YOU AND
6 YOUR TEAM. HAVE YOU RECEIVED AND GONE OVER WITH YOUR CLIENT
7 THE PRESENTENCE REPORTS FOR BOTH DEFENDANTS?

8 **MR. GASNER:** YES.

9 **THE COURT:** YOU HAVE SEEN ALL OF THE MEMORANDA?

10 **MR. GASNER:** YES. THE SENTENCING MEMORANDA. WE JUST
11 RECEIVED YESTERDAY DU PONT'S LETTER THAT HAD BEEN SUBMITTED,
12 BUT I HAVEN'T HAD A CHANCE TO GO OVER THAT WITH MR. LIEW, BUT
13 I DO HAVE IT.

14 **THE COURT:** OTHER THAN WHAT YOU SUBMITTED IN WRITING,
15 DO YOU HAVE ANY ADDITIONAL OBJECTIONS?

16 **MR. GASNER:** NO ADDITIONAL OBJECTIONS OTHER THAN IT'S
17 IMPLICIT IN OUR ARGUMENTS TODAY.

18 **THE COURT:** ALL RIGHT. VERY WELL. PLEASE BE SEATED.

19 SO THE COURT'S GOING TO HAVE SOME REMARKS TO MAKE, AND
20 THEN AS NEEDED, I WILL ASK FOR INPUT FROM COUNSEL AND, OF
21 COURSE, WILL PROVIDE THE DEFENDANTS AN OPPORTUNITY TO ELOCUTE
22 OR SPEAK IN REFERENCE TO THEIR SENTENCE, RESPECTIVE SENTENCES.

23 AND SO AS IS THE COURT'S USUAL PRACTICE, I WILL ONLY ALLOW
24 COUNSEL TO ADDRESS THE COURT ON ISSUES THE COURT SPECIFICALLY
25 NEEDS AND WANTS INPUT FROM COUNSEL BECAUSE THE PARTIES HAVE,

1 PUTTING IT MILDLY TO SAY THE PARTIES HAVE SUBMITTED EXTENSIVE
2 BRIEFING AND EXHIBITS WITH RESPECT TO THESE PROCEEDINGS WHICH
3 THE COURT APPRECIATES BECAUSE THE MORE INFORMATION THE BETTER.

4 SO PURSUANT TO THE ORDER ISSUED ON JULY 8TH, 2014, THE
5 COURT HAS CONSIDERED THE PARTIES' REQUEST FOR EVIDENTIARY
6 HEARINGS ON THE ISSUES OF THE AMOUNT OF LOSS AND THE ISSUES
7 PERTAINING TO MR. HOUSTON AND MR. SPITLER, AND IT IS
8 DETERMINED THAT AN EVIDENTIARY HEARING -- DETERMINED, AS SET
9 FORTH IN THAT ORDER, THAT AN EVIDENTIARY HEARING WAS NOT
10 NECESSARY.

11 THE NEXT ISSUE THAT I WANT TO ADDRESS IS THE ISSUE OF
12 VICTIM IMPACT. SO, BEFORE THE COURT CONTINUES THESE
13 PROCEEDINGS, OR BEGINS THEM IN EARNEST, ARE THERE ANY VICTIMS
14 PRESENT IN COURT WHO WISH TO MAKE A STATEMENT TO THE COURT
15 PURSUANT TO 18, UNITED STATES CODE, SECTION 3771(A) (4) AND
16 PURSUANT TO KENNA V. UNITED STATES DISTRICT COURT FOR THE
17 CENTRAL DISTRICT OF CALIFORNIA, 435 F.3D, 1011 AT 1016 DECIDED
18 BY THE NINTH CIRCUIT IN 2006.

19 MR. HEMANN?

20 **MR. HEMANN:** YOUR HONOR, WE'RE AWARE THAT ONE OF THE
21 ATTORNEYS FOR DU PONT IS PRESENT. WE HAVE ASKED HIM WHETHER
22 HE WOULD LIKE TO SPEAK. HE HAS ADVISED US, UNLESS THE COURT
23 HAS QUESTIONS CONSISTENT WITH THE COURT'S PRACTICE, HE DOESN'T
24 HAVE ANYTHING IN ADDITION TO THE LETTER THAT THE COURT HAS
25 RECEIVED A COPY OF, BUT CERTAINLY IS AVAILABLE TO ANSWER ANY

1 QUESTIONS THAT THE COURT MIGHT HAVE.

2 I'M NOT AWARE OF ANY OTHER VICTIMS WHO ARE IN COURT RIGHT
3 NOW.

4 **THE COURT:** VERY WELL. THE COURT DEEMS THAT THE
5 VICTIMS' RIGHTS STATUTE THEN HAS BEEN COMPLIED WITH.

6 NOW, WITH RESPECT -- THE NEXT ISSUE THE COURT WISHES TO
7 ADDRESS ARE THE NUMEROUS OBJECTIONS TO THE PRESENTENCE
8 REPORTS.

9 I WANT TO SAY AS AN ASIDE, THAT WITHOUT INDICATING AT THIS
10 POINT, BECAUSE I HAVEN'T HEARD THE STATEMENTS OF THE
11 DEFENDANTS OR ANY RESPONSES TO ANY QUESTIONS, THE COURT
12 CERTAINLY HASN'T MADE UP HIS MIND FINALLY AS TO WHAT TO DO AS
13 FAR AS SENTENCING, BUT THE COURT'S FOUND THE PRESENTENCE
14 REPORT TO HAVE BEEN DONE IN AN EXCELLENT FASHION,
15 PROFESSIONAL, HELPFUL TO THE COURT, AND I THINK ATTEMPTED TO
16 AND ACHIEVED FAIR REPRESENTATION OF THE PARTIES' RESPECTIVE
17 POSITIONS, ESPECIALLY WITH REGARD TO THEIR FACTUAL OR
18 EVIDENTIARY CONTENTIONS. AND THE WAY IT WAS PRESENTED BY THE
19 PROBATION OFFICER, IT WAS VERY HELPFUL TO THE COURT AND THE
20 COURT APPRECIATES THAT EXCELLENT WORK.

21 NOW, THE PARTIES HAVE MADE EXTENSIVE OBJECTIONS TO FACTUAL
22 ASSERTIONS IN THE PSR. SEE DOCKET 853. ALSO THE DEFENDANTS',
23 WHICH IS THE DEFENDANTS' SENTENCING MEMORANDUM APPENDIX 2,
24 DOCKET NUMBER 857, WHICH IS THE GOVERNMENT'S AMENDED
25 SENTENCING MEMO, AT PAGES 8, LINE 26 THROUGH PAGE 10, LINE 25.

1 THE COURT, IN RESPONSE, STATES THAT IT DID SIT THROUGH
2 THIS TRIAL AND IS AWARE OF THE FACTS THAT ARE IN DISPUTE. THE
3 COURT WILL ADDRESS DEFENDANTS' OBJECTIONS TO SPECIFIC
4 ENHANCEMENTS WHEN IT RULES ON THE APPLICATION OF THOSE
5 ENHANCEMENTS.

6 THE DEFENDANTS CONTINUE TO ARGUE AGAINST THE JURY'S
7 VERDICT, AND I WANT TO SAY IN RESPONSE TO THAT, THE DEFENDANTS
8 HAVE EVERY RIGHT TO APPEAL THE JURY VERDICT, THE DECISION OF
9 THE JURY AND THE JURY VERDICTS, BUT TO THE EXTENT THAT THEY
10 OBJECT TO FACTS FOUND BY THE JURY, THE COURT OVERRULES THESE
11 OBJECTIONS -- THOSE OBJECTIONS.

12 THE COURT DOES NOT -- THE GOVERNMENT, ON THE OTHER HAND,
13 DOES NOT CLEARLY IDENTIFY EACH AND EVERY STATEMENT IT SEEKS TO
14 STRIKE FROM THE PRESENTENCE REPORT, SO THE COURT SHALL ONLY
15 ADDRESS THE SPECIFIC OBJECTIONS SET FORTH AT PAGE 9, LINES 20
16 THROUGH -- 22 THROUGH PAGE 10, LINE 18 OF ITS SENTENCING
17 MEMORANDUM.

18 THE COURT FINDS SOME OF THOSE OBJECTIONS WELL-TAKEN, AND
19 IT IS NOT CONSIDERED FACTUAL ASSERTIONS THAT CONTRADICT THE
20 JURY'S VERDICT, BUT IT WILL NOT STRIKE THOSE STATEMENTS FROM
21 THE PRESENTENCE REPORT. TO THE EXTENT THAT THE GOVERNMENT
22 OBJECTS TO THE PROBATION OFFICER'S CHARACTERIZATION OF
23 TESTIMONY, THOSE OBJECTIONS ARE OVERRULED.

24 NOW I WANT TO JUST TALK ABOUT THE PROCEDURE THAT THE COURT
25 INTENDS TO FOLLOW AND THE MANNER IN WHICH THE COURT INTENDS TO

1 PROCEED WITH THE SENTENCING OF THESE TWO DEFENDANTS. BECAUSE
2 USAPTI AND MR. LIEW RAISE THE SAME OBJECTIONS ABOUT THE AMOUNT
3 OF LOSS ENHANCEMENT, THE COURT WILL ADDRESS THAT ISSUE FIRST,
4 AND ITS RULING SHALL APPLY TO BOTH DEFENDANTS. THE COURT ALSO
5 WILL ADDRESS THE ISSUES OF FORFEITURE AND RESTITUTION AS
6 PRELIMINARY MATTERS.

7 AFTER THE COURT HAS SET FORTH ITS RULINGS ON THE LOSS
8 ENHANCEMENT, RESTITUTION, AND FORFEITURE, THE COURT WILL
9 PROCEED TO SENTENCING. IT WILL START, AS IT MUST, BY
10 CALCULATING THE APPLICABLE GUIDELINE RANGE FOR EACH DEFENDANT
11 PURSUANT TO UNITED STATES VERSUS CARTY, C-A-R-T-Y, 520 F.3D
12 984 AT 991 DECIDED BY THE NINTH CIRCUIT IN 2008.

13 BECAUSE OF EX POST FACTO ISSUES, MEANING MAKING SOMETHING
14 A VIOLATION WHICH WASN'T A VIOLATION AT THE TIME THE CONDUCT
15 OCCURRED AS SET FORTH IN THE U.S. CONSTITUTION, THE COURT IS
16 USING THE 2010 UNITED STATES SENTENCING GUIDELINES MANUAL.

17 AFTER THE COURT SETS FORTH ITS RULINGS ON THE APPLICABLE
18 GUIDELINE RANGE, THE COURT WILL GIVE THE DEFENDANTS THEIR
19 OPPORTUNITY TO ELOCUTE OR SPEAK TO THE COURT ABOUT WHAT THEY
20 BELIEVE THE COURT SHOULD CONSIDER ON THEIR BEHALF IN
21 SENTENCING THEM.

22 AFTER THE DEFENDANTS HAVE ELOCUTED, THE COURT WILL IMPOSE
23 SENTENCE AND SET FORTH ITS ANALYSIS OF THE 18, UNITED STATES
24 CODE, SECTION 3553(A) FACTORS THAT IT WILL BE CONSIDERING.

25 THE FIRST ISSUE THE COURT WISHES TO CONSIDER AND WILL

1 CONSIDER IS THE AMOUNT OF LOSS THAT'S SPECIFICALLY UNDER
2 UNITED STATES SENTENCING GUIDELINE SECTION 2B1.1. I WANT TO
3 FIRST ADDRESS THE BURDEN OF PROOF THAT IS CONTESTED BY THE
4 PARTIES.

5 IN GENERAL, A COURT APPLIES A PREPONDERANCE OF THE
6 EVIDENCE STANDARD WHEN IT FINDS FACTS PERTINENT TO SENTENCING.
7 UNITED STATES VERSUS ARMSTEAD, 552 F.3D 769 AT 776 DECIDED BY
8 THE NINTH CIRCUIT IN 2008.

9 DEFENDANTS ARGUE THAT THE COURT SHOULD REQUIRE THE
10 GOVERNMENT TO PROVE THE AMOUNT OF LOSS BY CLEAR AND CONVINCING
11 EVIDENCE. THE NINTH CIRCUIT HAS HELD THAT WHEN THE
12 APPLICATION OF A SENTENCING ENHANCEMENT RESULTS IN AN
13 EXTREMELY DISPROPORTIONATE QUOTE -- "EXTREMELY
14 DISPROPORTIONATE SENTENCE" UNQUOTE, THE GOVERNMENT MAY HAVE TO
15 SATISFY BY CLEAR AND CONVINCING STANDARD OF PROOF. SEE, FOR
16 EXAMPLE, UNITED STATES VERSUS TREADWELL, 593 F.3D 990 AT 1000
17 DECIDED BY THE NINTH CIRCUIT IS 2010 AND UNITED STATES VERSUS
18 JORDAN, J-O-R-D-A-N, 256 F.2D -- F.3D 922 AT 928 DECIDED BY
19 THE NINTH CIRCUIT IN 2001.

20 THE RATIONALE FOR APPLYING THE STANDARD IS ONE OF DUE
21 PROCESS. QUOTE, "WHERE A SEVERE SENTENCING ENHANCEMENT IS
22 IMPOSED ON THE BASIS OF UNCHARGED OR ACQUITTED CONDUCT, DUE
23 PROCESS MAY REQUIRE CLEAR AND CONVINCING EVIDENCE OF THAT
24 CONDUCT", UNQUOTE. 593 F.3D AT 1,000.

25 SEE ALSO THE TREADWELL CASE NOTING THAT THE COURT MUST

1 LOOK TO THE TOTALITY OF CIRCUMSTANCES TO DETERMINE IF A
2 HEIGHTENED STANDARD OF PROOF OF UNWARRANTED AND -- PROOF OF
3 UNWARRANTED AND LISTING FACTORS IS TO BE CONSIDERED IN THE
4 ANALYSIS.

5 THE NINTH CIRCUIT HAS QUOTE "REPEATEDLY HELD THAT
6 SENTENCING DETERMINATIONS RELATING TO THE EXTENT OF A CRIMINAL
7 CONSPIRACY NEED NOT BE ESTABLISHED BY CLEAR AND CONVINCING
8 EVIDENCE", UNQUOTE. CITING TREADWELL 593 F.3D AT 1001, WHICH
9 IN TURN CITES UNITED STATES VERSUS BERGER, B-E-R-G-E-R, 587
10 F.3D, 1038 AT 1047 THROUGH 1049 DECIDED BY THE NINTH CIRCUIT
11 IN 2009. SEE ALSO UNITED STATES V. JENKINS, 633 F.3D, 788 AT
12 808 NOTE 8 DECIDED BY THE NINTH CIRCUIT IN 2011 NOTING THAT
13 THE COURT WAS QUOTE "OVERLY CAUTIOUS" UNQUOTE IN ADOPTING
14 CLEAR AND CONVINCING -- THE CLEAR AND CONVINCING EVIDENCE
15 STANDARD.

16 AND SEE ALSO UNITED STATES VERSUS NOSAL, N-O-S-A-L, 2014
17 WESTLAW 121519 AT ASTERISK 3, NORTHERN DISTRICT OF CALIFORNIA
18 DECIDED JANUARY 23RD, 2014, CITING JENKINS 633 F.3D AT 808
19 NOTE 8, APPLYING THE PREPONDERANCE OF THE EVIDENCE STANDARD
20 WHERE THE DEFENDANT WAS CONVICTED OF CONSPIRACY.

21 THE JURY CONVICTED DEFENDANTS OF, AMONG OTHER THINGS, OF
22 CONSPIRACY TO COMMIT ECONOMIC ESPIONAGE AND CONSPIRACY TO
23 COMMIT THEFT OF TRADE SECRETS. BASED UPON THE REASONING OF
24 TREADWELL AND BERGER, THE COURT SHALL APPLY THE PREPONDERANCE
25 OF THE EVIDENCE STANDARD TO THE AMOUNT OF LOSS ENHANCEMENT.

1 THE COURT NOW TURNS TO THE CALCULATION OF THE LOSS UNDER
2 THE GUIDELINES. AND UNDER THE GUIDELINES, THE LOSS IS THE
3 GREATER OF THE ACTUAL OR INTENDED LOSS. UNITED STATES
4 SENTENCING GUIDELINE SECTION 2B1.1 APPLICATION NOTE 3(A). THE
5 COURT QUOTE "NEED ONLY MAKE A REASONABLE ESTIMATE OF LOSS"
6 UNQUOTE. THAT'S THE SAME CITATION, THE APPLICATION NOTE AT
7 3C.

8 QUOTE, "ACTUAL LOSS" UNQUOTE IS THE QUOTE "REASONABLY
9 FORESEEABLE PECUNIARY HARM THAT RESULTED FROM THE OFFENSE"
10 UNQUOTE. THAT IS, THE MONETARY HARM THAT THE DEFENDANT KNEW
11 OR REASONABLY SHOULD HAVE KNOWN WAS A POTENTIAL RESULT OF THE
12 OFFENSE. SEE THE SAME CITATION, THE APPLICATION NOTE AT 3(A),
13 1 LITTLE I AND FOUR LITTLE I'S.

14 QUOTE "INTENDED LOSS" UNQUOTE, IS THE QUOTE "PECUNIARY
15 HARM THAT WAS INTENDED TO RESULT FROM THE OFFENSE AND INCLUDES
16 INTENDED PECUNIARY HARM THAT WOULD HAVE BEEN IMPOSSIBLE OR
17 UNLIKELY TO OCCUR. FOR EXAMPLE, AS IN A GOVERNMENT STING
18 OPERATION OR AN INSURANCE FRAUD IN WHICH THE CLAIM EXCEEDED
19 THE INSURED VALUE", UNQUOTE. THE SAME CITATION AT APPLICATION
20 NOTE 3(A) TWO LITTLE I'S.

21 IN OTHER WORDS, INTENDED LOSS IS THE AMOUNT OF LOSS THE
22 DEFENDANT QUOTE "PURPOSELY SOUGHT TO INFILCT" UNQUOTE. SEE,
23 FOR EXAMPLE, UNITED STATES VERSUS TO TORLAI, T-O-R-L-A-I, 728
24 F.3D 932 AT 947 NOTE 14, DECIDED BY THE NINTH CIRCUIT IN 2013
25 QUOTING UNITED STATES VERSUS MANATAU, M-A-N-A-T-A-U, 647 F.3D

1048 AT 1050 DECIDED BY THE TENTH CIRCUIT 2011 AND UNITED
STATES VERSUS TULANER, T-U-L-A-N-E-R, 512 F.3D 576 AT 581
DECIDED BY THE NINTH CIRCUIT IN 2008.

THE COURT MAY CONSIDER GAIN AS QUOTE "AN ALTERNATIVE
MEASURE OF LOSS", UNQUOTE, BUT QUOTE "ONLY IF THERE IS A LOSS
BUT IT IS REASONABLY -- IT REASONABLY CANNOT BE DETERMINED",
UNQUOTE. AND I'M CITING THERE THE UNITED STATES SENTENCING
GUIDELINE SECTION 2B1.1, APPLICATION NOTE 3(B).

THE APPLICATION NOTES ALSO PROVIDE THAT IN CASES INVOLVING
QUOTE "PROPRIETARY INFORMATION" ("E.G. TRADE SECRETS") A COURT
MAY CONSIDER QUOTE "THE COST OF DEVELOPING THAT INFORMATION OR
THE REDUCTION IN THE VALUE OF THAT INFORMATION THAT RESULTED
FROM THE OFFENSE", UNQUOTE, IN ORDER TO DETERMINE A REASONABLE
ESTIMATE OF LOSS. SEE THE SAME CITATION AT APPELLATE NOTE
3(C) TWO LITTLE I'S.

DEFENDANTS CONTINUE TO DISPUTE THAT DU PONT SUFFERED A
LOSS. ALTHOUGH THE JURY WAS NOT REQUIRED TO CONCLUDE THAT
TRADE SECRET 1, THE QUOTE "DU PONT CHLORIDE ROOT PROCESS",
UNQUOTE, WAS AN ACTUAL TRADE SECRET, THAT DOES NOT NEGATE A
FINDING THAT DU PONT SUFFERED A LOSS AS A RESULT OF
DEFENDANTS' CONDUCT. INDEED, IN ORDER TO CONVICT DEFENDANTS
ON COUNTS 6, 7 AND 9, THE JURY HAD TO CONCLUDE THAT TRADE
SECRETS 2 THROUGH 4 WERE, IN FACT, TRADE SECRETS AND THAT THE
DEFENDANTS KNEW OR INTENDED THAT THE OFFENSE WOULD INJURE DU
PONT. AND I'M CITING THERE FINAL JURY INSTRUCTIONS AT

1 PAGE 34.

2 MOREOVER, THE COURT HEARD THE TESTIMONY AT THE TRIAL, AND
3 THE COURT CONCLUDES THAT THE EVIDENCE SHOWS THAT DU PONT, IN
4 FACT, HAS SUFFERED A LOSS.

5 THE MORE DIFFICULT ISSUE FOR THE COURT AND THE ISSUE THE
6 COURT MUST DECIDE IS HOW TO MEASURE THAT LOSS BECAUSE IT'S
7 HOTLY CONTESTED BY THE PARTIES. THE GOVERNMENT CONTENDS THAT
8 THE AMOUNT OF THE LOSS CANNOT BE REASONABLY CALCULATED AND
9 URGES THE COURT TO RELY ON DEFENDANTS' GAIN TO MEASURE THE
10 LOSS. THE PROBATION OFFICER ALSO RECOMMENDS USING GAIN AS THE
11 APPROPRIATE MEASURE OF LOSS.

12 THE COURT HAS STRUGGLED WITH THIS ISSUE. NONE OF THE
13 PARTIES TRULY URGED THE COURT TO USE THE QUOTE "INTENDED LOSS"
14 UNQUOTE AS A MEANS TO CALCULATE LOSS. ALTHOUGH THE GOVERNMENT
15 REFERS TO A TRIAL EXHIBIT, TRIAL EXHIBIT 374, A POWER POINT
16 PRESENTATION ATTACHED TO AN EMAIL FOUND IN MR. LIEW'S
17 POSSESSION, THE COURT FINDS THAT THIS EXHIBIT IS NOT
18 SUFFICIENT TO MAKE A REASONABLE, NONSPECULATIVE CALCULATION
19 BASED UPON THE INTENDED LOSS.

20 THE DEFENDANTS, ON THE OTHER HAND, URGE THE COURT TO ADOPT
21 MR. COOPER'S CALCULATION OF QUOTE "ACTUAL LOSS" UNQUOTE.
22 HOWEVER, THE COURT DOES NOT FIND MR. COOPER'S CALCULATION OF
23 LOSS TO BE CREDIBLE OR REASONABLE. INDEED, BASED UPON
24 MR. COOPER'S TESTIMONY AT TRIAL, THE COURT DOES NOT FIND
25 MR. COOPER TO BE A CREDIBLE WITNESS.

1 HAVING CONSIDERED THE TESTIMONY AT TRIAL AND HAVING
2 CONSIDERED DU PONT'S VICTIM IMPACT STATEMENT, THE COURT
3 CONCLUDES THERE IS A REASONED BASIS TO FIND THAT DU PONT'S
4 ACTUAL LOSSES REASONABLY CANNOT BE DETERMINED AT THIS TIME.
5 AND I SAY "AT THIS TIME" BECAUSE THERE ARE ISSUES RELATING TO
6 RESTITUTION.

7 THE COURT CONCLUDES THAT THE ONLY REASONABLE WAY TO
8 CALCULATE LOSS IS TO USE THE DEFENDANTS' GAIN WHICH RANGES
9 BETWEEN 22.5 MILLION, IF EXPENSES ARE DEDUCTED, TO
10 \$28 MILLION. USING EITHER OF THOSE FIGURES RESULTS IN A
11 22-POINT ENHANCEMENT UNDER U.S. SENTENCING GUIDELINE
12 2B1.1(B) (1) (K).

13 ACCORDINGLY, THE COURT APPLIES A 22-POINT ENHANCEMENT FOR
14 THE AMOUNT OF DU PONT'S LOSS IN THIS CASE.

15 NOW THE NEXT ISSUE THAT THE COURT IS GOING TO DEAL WITH IS
16 RESTITUTION.

17 MR. LIEW DOES NOT DISPUTE THE AMOUNT OF RESTITUTION THAT
18 SHOULD BE AWARDED IN CONNECTION WITH THE BANKRUPTCY CHARGES,
19 THE BANKRUPTCY FRAUD CHARGES, OR MAKING FALSE STATEMENTS TO
20 THE BANKRUPTCY COURT AND TRUSTEE.

21 THE PROBATION OFFICER RECOMMENDS AWARDING RESTITUTION AS
22 FOLLOWS ON THOSE CHARGES: STANE, S-T-A-N-E, CONSULTING
23 \$52,356, ADECCO, A-D-E-C-C-O, ENGINEERING AND TECHNICAL
24 \$32,571. LAW OFFICES OF MICHAEL CARROLL, C-A-R-R-O-L-L -- IN
25 THE PRESENTENCE REPORT, THE PROBATION OFFICER RECOMMENDED

1 AWARDING RESTITUTION IN THE AMOUNT OF 49,973 TO THE -- TO
2 THOSE LAW OFFICES. THE PROBATION OFFICER HAS SINCE BEEN
3 INFORMED BY MR. CARROLL THAT ACCOUNTING FOR INTEREST ON THE
4 OBLIGATION, HE IS SEEKING THE SUM OF \$58,881.82.

5 LET ME ASK MR. GASNER, DO THE DEFENDANTS OBJECT TO THE
6 LARGER FIGURE?

7 **MR. GASNER:** THE 500,000?

8 **THE COURT:** NO, NO. 58,881 AS OPPOSED TO \$49,973.

9 **MR. GASNER:** NO, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. THANK YOU.

11 ALL RIGHT. THE COURT SHALL ORDER MR. LIEW TO PAY
12 RESTITUTION TO THOSE ENTITIES AS PART OF ITS JUDGMENT AND
13 SHALL SPECIFY THE AMOUNTS TO BE PAID WHEN IT PRONOUNCES THE
14 SENTENCE.

15 THE PARTIES DO DISPUTE WHAT, IF ANY, RESTITUTION COULD BE
16 AWARDED TO DU PONT. THE PROBATION OFFICER RECOMMENDS ORDERING
17 RESTITUTION IN THE AMOUNT OF \$367,679 BASED ON LOSSES INCURRED
18 IN THE FORM OF EMPLOYEE TIME AND LEGAL FEES, AS WELL AS THE
19 COSTS INCURRED IN RESPONDING TO A SUBPOENA, RULE 17(C)
20 SUBPOENA.

21 DU PONT HAS REQUESTED AN ADDITIONAL \$28 MILLION IN
22 RESTITUTION. SEE MR. LIEW'S PSR AT PARAGRAPHS 36 THROUGH 37
23 AND DU PONT VICTIM IMPACT STATEMENT THAT THEY WERE ENTITLED TO
24 FILE AND DID FILE WITH THE PROBATION DEPARTMENT.

25 QUOTE "THE GOAL OF RESTITUTION UNDER THE MANDATORY VICTIMS

1 RESTITUTION ACT IS TO MAKE THE VICTIM WHOLE. CONSEQUENTLY,
 2 ANY AWARD IS LIMITED TO THE VICTIM'S ACTUAL LOSSES", UNQUOTE.
 3 AND QUOTE, "THE DISTRICT COURT SHOULD NOT RELY ON ITS
 4 CALCULATION OF THE LOSS UNDER THE SENTENCING GUIDELINES TO
 5 DETERMINE THE AMOUNT OF RESTITUTION, AS THE TWO MEASURES SERVE
 6 DIFFERENT PURPOSES AND UTILIZE DIFFERENT CALCULATION METHODS",
 7 UNQUOTE.

8 I WAS CITING THERE UNITED STATES VERSUS -- QUOTING UNITED
 9 STATES V. ANDERSON, 741 F.3D 938 AT 951 DECIDED BY THE NINTH
 10 CIRCUIT IN 2013. SEE ALSO UNITED STATES VERSUS FU SHENG KUO,
 11 F-U, S-H-E-N-G, K-U-O, 620 F.3D 1158 AT 1156 DECIDED BY THE
 12 NINTH CIRCUIT IN 2010 HOLDING THAT QUOTE "A DISTRICT COURT MAY
 13 NOT ORDER RESTITUTION TO REFLECT" UNQUOTE A DEFENDANTS'
 14 ILL-GOTTEN GAINS.

15 ALTHOUGH THE COURT HAS DETERMINED THAT THE AMOUNT OF LOSS
 16 SHOULD BE MEASURED BY DEFENDANTS' GAIN, THE COURT WILL NOT USE
 17 THAT FIGURE FOR PURPOSES OF RESTITUTION BECAUSE RESTITUTION
 18 MUST BE PREMISED UPON ACTUAL LOSSES.

19 THE GOVERNMENT SUGGESTS THAT THE COURT DEFER RULING ON THE
 20 ISSUE OF RESTITUTION TO DU PONT. IF A VICTIM'S LOSS IS QUOTE
 21 "ARE NOT ASCERTAINABLE BY THE DATE THAT IS TEN DAYS PRIOR TO
 22 SENTENCING, THE COURT SHALL SET A DATE FOR THE FINAL
 23 DETERMINATION OF THE VICTIM'S LOSSES NOT TO EXCEED 30 DAYS
 24 AFTER SENTENCING". AND THERE I -- UNQUOTE. THERE I WAS
 25 QUOTING 18, UNITED STATES CODE, SECTION 3664(D) (5).

1 IF THE GOVERNMENT CONTENDS THAT DU PONT SHOULD BE AWARDED
2 MORE THAN \$367,679 IN RESTITUTION, THE COURT SHALL DEFER FINAL
3 RULING ON THE AMOUNT OF RESTITUTION TO BE AWARDED TO DU PONT
4 AND IT SHALL SET THIS MATTER DOWN FOR A RESTITUTION HEARING.

5 SO I'M GOING TO ASK MR. AXELROD, HOW DOES THE GOVERNMENT
6 REQUEST THAT THE COURT PROCEED IN THIS REGARD?

7 **MR. HEMANN:** I AM NO MR. AXELROD, YOUR HONOR, BUT
8 IT'S ME.

9 SO, OUR INCLINATION NOW, GIVEN THE COURT'S RULINGS, AND IN
10 LIGHT OF ALL THE FILINGS THAT HAVE BEEN MADE AND OUR
11 CONSULTATION WITH DU PONT, IS TO ENCOURAGE THE COURT AND
12 REQUEST THE COURT ORDER THE \$367,000 AS RESTITUTION UNDER THE
13 RESTITUTION STATUTE TODAY, AND WE WOULD WITHDRAW OUR REQUEST
14 FOR A HEARING -- A FURTHER HEARING.

15 THERE IS A CIVIL ACTION PENDING AGAINST MR. LIEW. AND IF
16 THAT -- THAT MIGHT PROVIDE A VEHICLE FOR ADDITIONAL DISCUSSION
17 OF DAMAGES, BUT IN THE CONTEXT OF THIS CASE, WE THINK THAT THE
18 \$367,000 IS APPROPRIATE TODAY. AND I HAVE CONSULTED WITH
19 MR. CLARK AND HE IS OF THAT VIEW AS WELL.

20 **MS. LOVETT:** YOUR HONOR, IF I MAY BRIEFLY BE HEARD.

21 **THE COURT:** SURE.

22 **MS. LOVETT:** WE -- THE DEFENDANTS WOULD OBJECT TO AN
23 ORDER OF \$367,000 IN RESTITUTION. THE \$200,000 THAT DU PONT
24 ASKED FOR FOR VARIOUS HOURS SPENT BY EMPLOYEES OR ATTORNEYS ON
25 THIS CRIMINAL MATTER IS TOO VAGUE TO ORDER RESTITUTION.

1 UNITED STATES V. WAKNINE, W-A-K-N-I-N-E, AND I HAVE THE
 2 CITATION IF YOU WOULD LIKE IT, REQUIRES THAT THE VICTIM SHOW
 3 THAT THE EXPENSES WERE REASONABLY RELATED TO THE CURRENT CASE.

4 THERE WERE MULTIPLE DEFENDANTS IN THIS CASE. THE -- DU
 5 PONT HAS NOT BEEN SPECIFIC ABOUT HOW THIS \$200,000 WAS SPENT.
 6 IT'S A BACK-OF-THE-ENVELOPE CALCULATION OF EXACTLY THE KIND
 7 THAT WAKNINE DOES NOT ALLOW.

8 **THE COURT:** ALL RIGHT. MR. -- I WAS GOING TO CALL
 9 YOU MR. AXELROD AGAIN. BUT, MR. HEMANN.

10 **MR. HEMANN:** YOUR HONOR, WE BELIEVE BASED ON THE
 11 SUBMISSIONS OF DU PONT THAT IT IS A REASONABLE ESTIMATE. IN
 12 FACT, I THINK THAT IT IS FAR LESS THAN DU PONT WAS REQUIRED TO
 13 SPEND IN CONNECTION WITH THE INVESTIGATION AND PROSECUTION OF
 14 THIS CASE.

15 IF THE DEFENDANTS OBJECT, ONE POSSIBILITY IS THAT WE ASK
 16 DU PONT TO DO A MORE SPECIFIC CALCULATION. I THINK THAT
 17 THE -- A REASONABLE ESTIMATE IS APPROPRIATE. I DON'T THINK
 18 THE DEFENSE HAS SUGGESTED WHY THIS IS NOT A REASONABLE
 19 ESTIMATE OR HOW THIS IS NOT A REASONABLE ESTIMATE. BUT
 20 CERTAINLY ONE POSSIBILITY, YOUR HONOR, IS THAT WE KICK IT DOWN
 21 THE ROAD, WE GO THROUGH AND ASK DU PONT TO PUT SOME MORE MEAT
 22 ON THE BONES AND MOVE FORWARD IN THAT WAY. I THINK THE
 23 GOVERNMENT DOESN'T BELIEVE THAT THAT'S NECESSARY.

24 **THE COURT:** ONE POSSIBILITY, MS. LOVETT, IS THAT THE
 25 COURT STICK TO ONE OF THE ALTERNATIVE PLANS, WHICH IS TO SET

1 A, A KIND OF A PLACEHOLDER DATE, AT LEAST, FOR A HEARING,
2 ALLOW FACTUAL PRESENTATIONS BY THE PARTIES ON THIS ISSUE --

3 **MS. LOVETT:** YES.

4 **THE COURT:** LET ME FINISH. I DIDN'T WANT TO
5 INTERRUPT MR. GASNER.

6 **MS. LOVETT:** APOLOGIES, YOUR HONOR.

7 **THE COURT:** YOU DON'T HAVE TO APOLOGIZE. COUNSEL CAN
8 ALWAYS TALK TO EACH OTHER.

9 IS TO DO THAT, GIVE YOU -- GIVE THE DEFENDANTS A CHANCE TO
10 PRESENT THEIR POSITION. AND THEN IF THE COURT NEEDS AN
11 EVIDENTIARY HEARING, WE CAN USE THAT DATE TO MAKE THE
12 DETERMINATION.

13 THE ONLY AMOUNT THAT WOULD BE IN PLAY, IT SOUNDS LIKE, AM
14 I CORRECT, IS THE \$200,000?

15 **MS. LOVETT:** YOUR HONOR, THAT'S CORRECT.

16 THE CASE THAT I'M SPEAKING OF IS WAKNINE, WHICH IS 543
17 F. 3D 546. AND IN THAT CASE THE NINTH CIRCUIT HELD THAT THE
18 VICTIM NEEDED TO PROVIDE ITEMIZED LISTS INDICATING HOW THE
19 EXPENSES INCURRED BY THE VICTIM RELATED TO THE CASE AT ISSUE,
20 AND HOW THEY WERE DIRECTLY AND PROXIMATELY CAUSED BY THE
21 DEFENDANT.

22 SO WE WOULD ASK THAT AT THAT FURTHER HEARING -- BEFORE
23 THAT FURTHER HEARING, DU PONT PROVIDE THOSE ITEMIZED LISTS OF
24 HOW THOSE EXPENSES RELATE SO THAT THE COURT CAN MAKE A
25 JUDGMENT ABOUT HOW THEY RELATE TO THIS CASE AND SO THAT WE CAN

1 MAKE ARGUMENT ABOUT HOW THEY RELATE TO THIS CASE.

2 **THE COURT:** DID YOU WANT TO ADD SOMETHING,
3 MR. GASNER?

4 **MR. GASNER:** NO, YOUR HONOR, I DON'T THINK WE NEED A
5 WHOLE RESTITUTION HEARING THAT WOULD BE UNLIMITED. SO I THINK
6 THE COURT'S INSTINCT IS SIMPLY ORDER -- IN LIGHT OF THE
7 GOVERNMENT'S CONCESSION THAT THEY'RE NOT GOING TO BE SEEKING
8 MILLIONS AND MILLIONS OF DOLLARS, TO ENTER THE ORDER OF
9 RESTITUTION FOR THIS LOWER AMOUNT NOW, BUT SUBJECT TO PROVING
10 UP, IF YOU WILL, JUST PROVIDING THE DETAILS --

11 **THE COURT:** I DON'T THINK THE COURT CAN DO THAT.
12 BEFORE I GET TO -- I'M INCLINED TO SET SOME DATES HERE FOR
13 SUBMISSIONS.

14 **MR. HEMANN:** YOUR HONOR, IF I CAN ADD ONE VERY BRIEF
15 OBSERVATION THAT I THINK DOVETAILS WITH MR. GASNER'S
16 SUGGESTION, WHICH I TOOK AS A SUGGESTION THAT WE CAP IT HERE
17 AT \$367,000.

18 **THE COURT:** I'M NOT SURE I CAN DO THAT.

19 **MR. HEMANN:** WE AGREE WITH THAT, YOUR HONOR. I THINK
20 THAT THE NUMBER COULD GO QUITE A BIT HIGHER. IF WE GO DOWN
21 THIS ROAD, IT COULD BE \$500,000 OR \$600,000.

22 **THE COURT:** HERE'S MY -- LET ME SAY THIS. AND I SAY
23 THIS WITH GREAT TREPIDATION, BUT IF THE COURT -- IF WE ARE
24 GOING TO BE IN FOR THE PROVERBIAL DIME, WE ARE GOING TO BE IN
25 FOR THE PROVERBIAL DOLLAR. AND IF WE ARE GOING TO HAVE A

1 HEARING, THEN I'M GOING TO ALLOW DU PONT TO PROVE UP ALL ITS
2 DAMAGES WITH NO CAP, AND I WILL THEN CONSIDER WHAT -- ANY
3 NUMBER FROM 167,000, WHICH IS NOT CONTESTED, TO WHATEVER
4 NUMBER, YOU KNOW, WHATEVER CARL SAGAN-LIKE NUMBERS DU PONT IS
5 ABLE TO PROVE UP TO THIS COURT.

6 SO IF THAT'S WHAT YOU WANT, MS. LOVETT, THAT'S WHAT YOU'LL
7 GET.

8 **MS. LOVETT:** IN THAT CASE, YOUR HONOR, WE DO NOT
9 REQUEST A HEARING, AND WE WILL AGREE TO AN ORDER OF
10 RESTITUTION TODAY.

11 **THE COURT:** TO THE FULL AMOUNT, THE 367?

12 **MS. LOVETT:** YES, YOUR HONOR.

13 **THE COURT:** VERY WELL. LET'S MOVE ON.

14 LET'S NOT MOVE ON YET BECAUSE I WANT TO ASK MR. HEMANN A
15 QUESTION. AND THAT IS, WILL ORDERING RESTITUTION TODAY --
16 THERE'S BEEN SOME DISCUSSION, AND I HESITATE TO TALK ABOUT
17 THIS BECAUSE THIS RELATES TO MRS. LIEW AND HER CASE, BUT I CAN
18 ASK YOU, IN TERMS OF THE COURT MANAGING ITS CALENDAR, IS --
19 WILL THE ORDER OF RESTITUTION TODAY IMPACT IN ANY WAY
20 MS. LIEW'S PLEA DATE OR DAY FOR CHANGE OF PLEA THAT THE COURT
21 PREVIOUSLY ORDERED, FROM YOUR PERSPECTIVE?

22 **MR. HEMANN:** IF ANYTHING, YOUR HONOR, IT WOULD
23 FURTHER -- MY OPINION IS IT WOULD FURTHER SOLIDIFY THAT DATE.

24 **THE COURT:** OKAY. I DON'T WANT TO SAY ANYTHING MORE
25 BECAUSE SHE'S NOT REPRESENTED HERE AND THIS IS NOT ABOUT HER

1 CASE.

2 NOW, I HAVE ANOTHER QUESTION. THE COURT INTENDS TO MAKE
 3 THE AWARD TO DU PONT JOINT AND SEVERAL, BUT I WANT TO ASK THE
 4 GOVERNMENT FOR THEIR POSITION ON WHICH, IF ANY, OTHER -- WHICH
 5 DEFENDANTS, WHICH OTHER DEFENDANTS' LIABILITY SHOULD BE
 6 SHARED?

7 I MEAN, THE CANDIDATES WOULD BE MR. MAEGERLE AND THE OTHER
 8 GENTLEMAN, WHOSE NAME I CAN'T REMEMBER AT THIS POINT.

9 **MR. HEMANN:** MR. CHAO.

10 **THE COURT:** YES.

11 **MR. HEMANN:** WE BELIEVE THAT THOSE ARE THE TWO OTHER
 12 CANDIDATES AS TO WHOM THE OBLIGATION WOULD RUN, WITH THE
 13 FOLLOWING CAVEAT: I THINK IT WOULD RUN FULLY JOINTLY AND
 14 SEVERALLY AS TO MR. MAEGERLE.

15 MR. CHAO PLED AT THE VERY, VERY BEGINNING OF THIS CASE,
 16 AND I THINK THAT -- I WOULD HAVE TO LOOK AT THE CASE THAT
 17 MS. LOVETT CITED -- BUT IT COULD BE UNDER THAT CASE THAT
 18 THE -- THAT THE COSTS THAT DU PONT INCURRED AFTER MR. CHAO
 19 PLED ARE NOT REASONABLY ATTRIBUTABLE OR CAUSED BY HIM.

20 SO I THINK THAT THERE ARE SOME COSTS AT THE BEGINNING OF
 21 THIS, BUT THEY WOULD BE MINIMAL IN RELATION TO THE 367. THE
 22 LION'S SHARE OF THAT WOULD HAVE COME POST -- POST MR. CHAO'S
 23 PLEA.

24 **THE COURT:** WELL, I THINK IF THERE IS ANY LIABILITY,
 25 IT ALL OUGHT TO BE JOINT AND SEVERAL. I THINK THE ISSUE OF

1 HOW ONE -- HOW THE PARTY, YOU KNOW, THE INJURED PARTY, DU
 2 PONT, WOULD EXERCISE THAT, IT CAN CERTAINLY DISCUSS THAT WITH
 3 THE GOVERNMENT AND DEFENSE COUNSEL, FOR THAT MATTER --

4 **MR. HEMANN:** YES, YOUR HONOR.

5 **THE COURT:** BUT I THINK THE APPROPRIATE WAY TO DO IT
 6 IS TO ORDER JOINT AND SEVERAL LIABILITY WITH AT LEAST FOR
 7 MR. MAEGERLE AND MR. CHAO, AND THEN YOU CAN -- THE PARTIES CAN
 8 SORT THAT OUT LATER.

9 **MR. HEMANN:** WE HAVE NO OBJECTION, YOUR HONOR.

10 **THE COURT:** I WANT TO TURN TO FORFEITURE NOW, AND
 11 THAT'S THE NEXT ISSUE THE COURT IS GOING TO TURN TO.

12 UNDER CRIMINAL RULE 32.2(B)(1)(B), IF FORFEITURE IS
 13 CONTESTED, QUOTE "ON EITHER PARTIES' REQUEST, THE COURT MUST
 14 CONDUCT A HEARING AFTER THE VERDICT OR FINDING OF GUILTY",
 15 UNQUOTE.

16 BECAUSE NEITHER PARTY ADDRESSED THIS ISSUE IMMEDIATELY
 17 FOLLOWING THE VERDICT OR, FOR THAT MATTER, IN THEIR SENTENCING
 18 MEMORANDA, THE COURT REQUIRED THE PARTIES TO SUBMIT A JOINT
 19 STATEMENT ON THEIR RESPECTIVE POSITIONS ON THIS ISSUE, WHICH
 20 THEY DID FILE ON JUNE 23RD, 2014, WHICH IS DOCKET NUMBER 866.

21 THE DEFENDANTS STATE THAT THEY CONTEST FORFEITURE AND ASK
 22 THE COURT TO HOLD AN EVIDENTIARY HEARING AFTER MRS. LIEW'S
 23 PLEA IS FINALIZED. HOWEVER, ACCORDING TO COUNSEL FOR
 24 MRS. LIEW AND THE GOVERNMENT, HER PLEA CANNOT BE FINALIZED
 25 UNTIL MR. LIEW IS SENTENCED.

1 MOREOVER, PURSUANT TO RULE 32.2(B)(4)(B), QUOTE, "THE
2 COURT MUST, underscore must include the FORFEITURE WHEN ORALLY
3 ANNOUNCING THE SENTENCE OR MUST OTHERWISE ENSURE THAT THE
4 DEFENDANT KNOWS OF THE FORFEITURE AT SENTENCING", UNQUOTE.

5 THE COURT ALSO MUST INCLUDE THE FORFEITURE ORDER DIRECTLY
6 OR BY REFERENCE IN THE JUDGMENT. THUS, UNLIKE RESTITUTION,
7 THE COURT CANNOT DEFER RESOLUTION OF THIS ISSUE UNTIL AFTER IT
8 SENTENCES THE DEFENDANTS AND WILL NOT CONTINUE THE SENTENCING
9 HEARING FOR FURTHER PROCEEDINGS.

10 THE DEFENDANTS ALSO ARGUE THAT THE AMOUNT OF FORFEITURE
11 THAT THE GOVERNMENT SEEKS WOULD VIOLATE THE EXCESSIVE FINES
12 CLAUSE.

13 QUOTE "THE TOUCHSTONE OF THE CONSTITUTIONAL INQUIRY UNDER"
14 UNQUOTE THAT CLAUSE QUOTE "IS THE PRINCIPLE OF
15 PROPORTIONALITY. THE AMOUNT OF THE FORFEITURE MUST BEAR SOME
16 RELATIONSHIP TO THE GRAVITY OF THE OFFENSE THAT IS DESIGNED TO
17 PUNISH", UNQUOTE. AND I'M CITING THERE U.S. VERSUS BAJAKAJIAN
18 B-A-J-A-K-A-J-I-A-N, 524 UNITED STATES 321 AT 334 DECIDED IN
19 1998.

20 THIS ARGUMENT IS PREMISED IN LARGE PART ON DEFENDANTS'
21 CONTINUED ASSERTION THAT THE TRADE SECRETS AT ISSUE LACKED ANY
22 VALUE OR THAT DU PONT SUFFERED ANY HARM AS A RESULT OF THEIR
23 CONDUCT. DEFENDANTS WERE CONVICTED OF VIOLATING THE ECONOMIC
24 ESPIONAGE ACT. AS THE COURT WILL DISCUSS LATER IN THESE
25 PROCEEDINGS, CONGRESS HAS DEEMED THESE CRIMES TO BE WORTHY OF

SERIOUS PENALTIES. SEE, FOR EXAMPLE, THE BAJAKAJIAN CASE, 524 U.S. AT 339 AT NOTE 14, NOTING THAT THE MAXIMUM PENALTY OF FIVE YEARS AND \$250,000 FINE SUGGESTS THAT CONGRESS DID NOT VIEW REPORTING IN THAT CASE -- THE REPORTING OFFENSE AS TRIVIAL.

IN ADDITION, AS THE COURT WILL DISCUSS BELOW, THE AMOUNT THAT THE GOVERNMENT SEEKS IN FORFEITURE IS COMPARABLE TO THE MAXIMUM FINE THAT THE COURT COULD IMPOSE ON USAPTI UNDER THE GUIDELINES CALCULATION.

MOREOVER, THE DEFENDANTS' ARGUMENT IGNORES THE FACT THAT THE JURY ALSO CONVICTED MR. LIEW ON THE TAX CHARGES. AND HIS FAILURE TO REPORT THE INCOME EARNED FROM THE TIO2 PROJECTS DID DEPRIVE THE GOVERNMENT TO FUNDS TO WHICH IT OTHERWISE WOULD HAVE BEEN ENTITLED IN THE FORM OF TAX REVENUE.

GIVEN ALL THESE CIRCUMSTANCES, THE COURT CANNOT SAY THAT THE AMOUNT OF THE FORFEITURE IN THIS CASE IS QUOTE "GROSSLY DISPROPORTIONAL TO THE GRAVITY" UNQUOTE OF THE DEFENDANTS' OFFENSES.

THE DEFENDANTS ALSO ARGUE THAT TO THE EXTENT THE GOVERNMENT SEEKS TO FORFEIT REAL PROPERTY, IT HAS NOT SHOWN THE PROPERTY IN QUESTION CONSTITUTES -- PROPERTIES IN QUESTION CONSTITUTE OR WERE DERIVED FROM PROCEEDS OF THE OFFENSE. IN ITS ORDER SEEKING A PRELIMINARY ORDER OF FORFEITURE -- IN ITS PROPOSED ORDER SEEKING A PRELIMINARY ORDER OF FORFEITURE, THE GOVERNMENT STATES IT IS SEEKING A MONEY JUDGMENT RATHER THAN

1 FORFEITURE OF SPECIFIC PROPERTY. SO THE COURT DOES NOT VIEW
2 THAT ISSUE, THE IDENTIFICATION OF SPECIFIC PROPERTY, TO BE IN
3 PLAY HERE.

4 FINALLY, THE DEFENDANTS CONTEND THAT THE GOVERNMENT HAS
5 NOT ESTABLISHED THAT THE FULL AMOUNT OF THE MONEY JUDGMENT THE
6 GOVERNMENT SEEKS TO QUALIFY AS QUOTE "PROCEEDS" UNQUOTE OF THE
7 OFFENSE ON THE BASIS THAT SOME OF THE MONEY MR. LIEW OBTAINED
8 WAS FOR LEGITIMATE TASKS.

9 THE TERM QUOTE "PROCEEDS" UNQUOTE MEANS, QUOTE "PROPERTY
10 OF ANY KIND OBTAINED DIRECTLY OR INDIRECTLY AS THE RESULT OF
11 THE COMMISSION OF THE OFFENSE GIVING RISE TO THE FORFEITURE",
12 UNQUOTE. I AM CITING THERE 18, UNITED STATES CODE, SECTION
13 981(A)(2)(A). THE NINTH CIRCUIT HAS CONSTRUED THE TERM
14 BROADLY. SEE, FOR EXAMPLE, UNITED STATES VERSUS PHILLIPS, 704
15 F.3D 754 AT 771 DECIDED BY THE NINTH CIRCUIT IN 2012, UNITED
16 STATES VERSUS NEWMAN, N-E-W-M-A-N, 659 F.3D 1235 AT 1243
17 DECIDED BY THE NINTH CIRCUIT IN 2011.

18 THE COURT ALSO SAT THROUGH THIS VERY EXTENSIVE TRIAL AND
19 CAREFULLY LISTENED TO THE EVIDENCE, SOME OF WHICH IS NOTED IN
20 THE GOVERNMENT'S APPLICATION FOR FORFEITURE. GIVEN THE STATE
21 OF THE RECORD REGARDING MR. LIEW'S LACK OF EXPERIENCE WITH
22 TIO2 AND IN LIGHT OF THIS BROAD CONSTRUCTION AND THE FACT THAT
23 PROCEEDS MAY BE OBTAINED QUOTE "INDIRECTLY" UNQUOTE, THE COURT
24 EASILY CONCLUDES THAT NEITHER HE NOR HIS COMPANIES WOULD HAVE
25 RECEIVED THESE CONTRACTS IF HE HAD NOT BROUGHT THE TRADE

1 SECRETS TO THE TABLE.

2 THEREFORE, THE COURT CONCLUDES THE GOVERNMENT HAS MET ITS
3 BURDEN TO SHOW THAT THE SUM OF \$27,829,893.67 THAT MR. LIEW
4 AND HIS COMPANIES OBTAINED AS A RESULT OF THE CONTRACTS FOR
5 THE TIO2 PROJECTS REPRESENTS THE PROCEEDS OF THE OFFENSES.

6 NOW, I HAVE A QUESTION FOR THE GOVERNMENT ON THIS AS WELL.

7 WHAT IS YOUR POSITION, MR. AXELROD OR MR. HEMANN, ON
8 WHETHER THE FUNDS OBTAINED BY PERFORMANCE GROUP CAN BE
9 ATTRIBUTED TO USAPTI FOR PURPOSES OF FORFEITURE OR WHETHER THE
10 AMOUNT FOR USAPTI SHOULD BE LOWER.

11 I WILL ASK FOR YOUR POSITION AND I WILL ASK FOR
12 MS. LOVETT'S RESPONSE.

13 **MR. AXELROD:** I THINK THAT THEY CAN, YOUR HONOR. I
14 THINK THE EVIDENCE AT TRIAL ESTABLISHED THAT THESE ARE
15 FUNCTIONALLY ONE ENTITY, THAT THEY WERE REPRESENTED TO THE
16 CHINESE AS ONE ENTITY, AND THAT THE NAMES CHANGE, BUT THE
17 EMPLOYEES AND THE WORK THEY DID CONTINUED SO THAT THE FACTUAL
18 BASIS IS THERE TO SHOW THAT ALL OF THE FUNDS THAT WERE THE
19 PROCEEDS OF THIS CRIME CAN BE TREATED INDEPENDENT OF THE
20 SPECIFIC NAME OF THE COMPANIES.

21 **THE COURT:** ALL RIGHT. MS. LOVETT?

22 **MS. LOVETT:** YOUR HONOR, WE WOULD DISAGREE. USAPTI
23 PERFORMANCE GROUP WERE SEPARATELY REGISTERED WITH THE
24 SECRETARY OF STATE HERE IN CALIFORNIA, THEY REMAIN SEPARATELY
25 REGISTERED. IT WOULDN'T BE APPROPRIATE TO HAVE THE

1 PERFORMANCE GROUP SUMS IN WHICH PERFORMANCE GROUP IS A
2 SIGNATORY TO THE CONTRACT ATTRIBUTED TO USAPTI.

3 **THE COURT:** ALL RIGHT. DO YOU WANT TO SAY ANYTHING
4 IN REPLY?

5 **MR. AXELROD:** NO, YOUR HONOR.

6 **THE COURT:** I HAVE ANOTHER QUESTION FOR YOU. I WILL
7 TAKE THAT UNDER ADVISEMENT.

8 THE COURT, AS WITH THE RESTITUTION, INTENDS TO MAKE THE
9 FORFEITURE AWARD JOINT AND SEVERAL, BUT I'M ASKING THE
10 GOVERNMENT IS THEIR POSITION THE SAME IN THAT THE DEFENDANTS
11 CHAO AND MAEGERLE, THAT THE LIABILITY THAT THE GOVERNMENT IS
12 GOING TO IMPOSE HERE PURSUANT TO THE COMMENTS THAT IT MADE,
13 SHOULD BE JOINT AND SEVERAL WITH THE OTHER NAMED -- THE OTHER
14 DEFENDANTS.

15 **MR. AXELROD:** SO, TO ANSWER THAT QUESTION, YOUR
16 HONOR, MY UNDERSTANDING, AND I HAVE MR. COUNTRYMAN HERE WHO'S
17 A FORFEITURE EXPERT FROM OUR OFFICE, BUT THE ORDER THAT WE ARE
18 SEEKING IS ACTUALLY A MONEY JUDGMENT THAT IS SPECIFIC TO
19 MR. LIEW. AND IT WOULD BE JOINT AND SEVERAL AS TO ALL OF THE
20 DEFENDANTS.

21 SO THE -- EXCUSE ME. I AGREE WITH WHAT THE COURT WAS
22 INTENDING TO DO.

23 **THE COURT:** HERE'S WHAT I'M GOING TO DO. I
24 UNDERSTAND THE PARTIES' POSITION ON THIS. I WANT TO LOOK INTO
25 THIS A LITTLE FURTHER. I WANT TO TAKE A SHORT BREAK AND

1 CONSIDER THIS.

2 ANYTHING ELSE YOU WANTED TO SAY?

3 **MR. AXELROD:** I JUST WANTED TO ADD TO ONE OF THE
4 COMMENTS THE COURT MADE ABOUT THE EXCESSIVE FINE ARGUMENT,
5 BECAUSE THERE IS A NINTH CIRCUIT CASE THAT IS SPECIFICALLY ON
6 POINT THAT WE DID NOT RAISE THAT I JUST WANTED TO MENTION TO
7 THE COURT FOR THE RECORD.

8 AND THAT IS THE CASE OF UNITED STATES VERSUS RP, WHICH IS
9 264 F. 3D 860, AT 874 AND 875. THAT'S A NINTH CIRCUIT CASE
10 THAT SPECIFICALLY SAYS QUOTE "FORFEITURE OF PROCEEDS CANNOT BE
11 CONSIDERED PUNISHMENT AND THUS SUBJECT TO THE EXCESSIVE FINES
12 CLAUSE AS IT SIMPLY PARTS THE OWNER FROM THE FRUITS OF THE
13 CRIMINAL ACTIVITY."

14 AND THEN THE NINTH CIRCUIT GOES ON TO HOLD THAT THE
15 EXCESSIVE FINES CLAUSE DOES NOT PERTAIN TO A FORFEITURE OF
16 PROCEEDS. SO I JUST WANTED TO MAKE THAT CLEAR FOR THE COURT.

17 **THE COURT:** ALL RIGHT. THANK YOU. I'M GOING TO TAKE
18 A BREAK AND I WANT TO LOOK INTO THIS ISSUE. AND I'LL COME
19 BACK AND CONTINUE MY DISCUSSION.

20 **MS. LOVETT:** OKAY.

21 (RECESS TAKEN AT 10:47 A.M.; RESUMED AT 11:05 A.M.)

22 **THE COURT:** WE ARE BACK IN SESSION.

23 WITH RESPECT TO THE ISSUE THAT WE HAVE BEEN DISCUSSING,
24 THE ISSUE OF LIABILITY OF ONE ALLEGED CO-CONSPIRATOR FOR THE
25 ACTS OF ANOTHER CO-CONSPIRATOR WITHIN THE CONSPIRACY PERIOD AS

1 IT RELATES TO FORFEITURE, I WOULD LIKE TO START WITH
2 MR. COUNTRYMAN WHO IS -- PURPORTS TO BE THE EXPERT ON
3 FORFEITURE. I SAY "PURPORT" BECAUSE I DON'T WANT HIM TO ASK
4 FOR A RAISE BECAUSE OF THIS.

5 THE QUESTION IS, BASED UPON -- I WILL ASK IF THE
6 DEFENDANTS HAVE A RESPONSE, IS THERE ANY LAW THAT YOU ARE
7 AWARE OF, PREFERABLY SUPREME COURT OR IN THIS CIRCUIT, BUT I
8 WILL TAKE ANYTHING AT THIS POINT, IF THERE'S ANYTHING OUT
9 THERE, AS TO WHETHER FOR PURPOSES OF FORFEITURE, THAT THE ACTS
10 OF ONE CO-CONSPIRATOR -- THAT ONE CO-CONSPIRATOR CAN BE HELD
11 LIABLE FOR THE ACTS OF ANOTHER CO-CONSPIRATOR IF THOSE ACTS
12 OCCURRED WITHIN THE COURSE OF THE CONSPIRACY IRRESPECTIVE OF
13 THE ISSUE OF WHETHER ONE -- ONE ENTITY IS A LEGALLY SEPARATE
14 ENTITY.

15 IN OTHER WORDS, ASSUME FOR PURPOSES OF MY QUESTION THAT WE
16 ARE DEALING WITH TWO SEPARATE CORPORATE ENTITIES RATHER THAN
17 ALTER EGOS, BECAUSE QUITE HONESTLY, THE TESTIMONY AT TRIAL --
18 BECAUSE IT REALLY WASN'T AN ESSENTIAL ELEMENT OF THE CASE OR
19 ANY DEFENSE, WAS NOT REALLY LITIGATED. SO I WOULD LIKE TO
20 KNOW IF YOU KNOW OF ANY AUTHORITY TO THAT EFFECT THAT THE
21 COURT CAN LOOK AT DURING A LATER PAUSE IN THE PROCEEDINGS.

22 BECAUSE AS YOU KNOW, I'M REQUIRED TO RESOLVE ALL OF THESE
23 ISSUES TODAY GIVEN RULE 32. THEN I WILL ASK, OF COURSE, IF
24 THE DEFENDANTS KNOW OF ANY AUTHORITY ON THIS ISSUE, BECAUSE I
25 DON'T, QUITE FRANKLY.

1 **MR. COUNTRYMAN:** MY UNDERSTANDING NEWMAN ADDRESSES
2 THIS, YOUR HONOR.

3 **THE COURT:** WHAT IS THE CITATION?

4 **MR. COUNTRYMAN:** IT IS A NINTH CIRCUIT CASE, 659
5 F. 3D 1235. IF I RECALL CORRECTLY, THAT WAS A FRAUD SCHEME
6 INVOLVING MULTIPLE DEFENDANTS AND BOTH WERE HELD LIABLE FOR
7 THE ENTIRE PROCEEDS OF THE CONSPIRACY.

8 THERE IS ALSO -- THERE'S ALSO AN OUTSIDE OF THE CIRCUIT
9 CASE, UNITED STATES VERSUS ALI, 619 F. 3D, 713 WHERE THERE
10 WERE PEOPLE INVOLVED IN THE FRAUD SCHEME, AND ONE DEFENDANT
11 SOUGHT AN OFFSET DUE TO PAYMENTS.

12 THERE IS ALSO UNITED STATES VERSUS CASEY WHERE THERE WAS A
13 DRUG DEAL --

14 **THE COURT:** WHAT CIRCUIT --

15 **MR. COUNTRYMAN:** THAT WAS A SEVENTH CIRCUIT CASE,
16 2010.

17 **THE COURT:** OKAY.

18 **MR. COUNTRYMAN:** THERE'S ALSO UNITED STATES VERSUS
19 CASEY, LESS ON POINT, BUT WHERE A DRUG DEALER WAS -- HAD TO
20 PAY HIS -- THE HIGHER-UPS IN HIS DRUG ORGANIZATION. OF THE
21 \$7,000, HE ONLY MADE \$200. THE COURT SAID HE WAS LIABLE FOR
22 THE FULL \$7,000. IT DIDN'T MATTER IF HE CUT A BAD DEAL WITH
23 THE OTHER DRUG DEALER, HE WAS RESPONSIBLE FOR THE ENTIRE
24 AMOUNT. THAT WAS A NINTH CIRCUIT 444 F. 3D AT 1076 -- LET ME
25 GET THE EXACT CITE. 1037, YOUR HONOR. THAT IS NINTH CIRCUIT

1 2006.

2 **THE COURT:** THANK YOU VERY MUCH.

3 MS. LOVETT, DO YOU HAVE ANY CASES THAT YOU WANT THE COURT
4 TO CONSIDER?

5 **MS. LOVETT:** NO, YOUR HONOR.

6 **THE COURT:** I THOUGHT YOU KNEW ALL THE NINTH CIRCUIT
7 CASES BY HEART.

8 **MS. LOVETT:** YOU WOULD THINK.

9 **THE COURT:** THANK YOU VERY MUCH.

10 I'M GOING TO TAKE THAT UNDER ADVISEMENT BECAUSE I DON'T
11 KNOW THE ANSWER. I AM GOING TO ASSUME FOR PURPOSES OF MY
12 ANALYSIS THAT THESE ARE SEPARATE LEGAL ENTITIES BECAUSE THIS
13 ISSUE WAS NOT, TO MY RECOLLECTION AND THINKING BACK TO THE
14 TRIAL, REALLY LITIGATED. AND YOU CAN STILL HAVE ENTITIES THAT
15 ARE ALLEGEDLY CO-CONSPIRATORS AND USING DIFFERENT -- THE SAME
16 EMPLOYEES AND THE SAME PURPOSE AND STILL BE A SEPARATE LEGAL
17 ENTITY. SO I'M NOT GOING TO HEAR ARGUMENT ON IT. IT WAS --
18 I'M GOING TO ASSUME FOR THESE PURPOSES THAT THEY WERE SEPARATE
19 LEGAL ENTITIES, WHICH IS WHAT MS. LOVETT URGED ON THE COURT,
20 AND I DON'T THINK THE GOVERNMENT WOULD HAVE MET ITS BURDEN THE
21 OTHER WAY ON THIS ISSUE.

22 THANK YOU.

23 I WILL TAKE THAT ISSUE UNDER ADVISEMENT. I WANT TO READ
24 THOSE CASES. AT LEAST MY ALTER EGO WILL BE READING THOSE
25 CASES WHILE I AM IN COURT HERE BECAUSE I CAN'T MULTITASK LIKE

1 THAT.

2 SO I WANT TO PROCEED TO THE SPECIFIC SENTENCING OF
3 MR. LIEW. AND AS I MENTIONED AT THE BEGINNING OF THE
4 PROCEEDING, THE FIRST ROLE FOR THE COURT, OR JOB FOR THE COURT
5 IS TO DETERMINE WHAT THE GUIDELINE -- PROPER GUIDELINE
6 CALCULATIONS ARE, AND THAT HAS TO BE UNDER CARTY AND GALL AND
7 ITS PROGENY MUST BE THE STARTING POINT. THE COURT MUST
8 CORRECTLY DETERMINE THAT OFFENSE LEVEL AND CRIMINAL HISTORY
9 CATEGORY BEFORE IT GOES FURTHER IN THE ANALYSIS.

10 SO, WITH RESPECT TO MR. LIEW, IT IS UNDISPUTED THAT HIS
11 CRIMINAL HISTORY CATEGORY IS I. THE PARTIES ALSO HAVE NOT
12 DISPUTED THE BASE OFFENSE LEVELS FOR EACH OF THE CHARGES.

13 MR. LIEW ALSO DOES NOT CONTEST THE APPLICATION OF THE
14 FOLLOWING ENHANCEMENTS: FOREIGN GOVERNMENT OR FOREIGN
15 INSTRUMENTALITY, U.S. SENTENCING GUIDELINE SECTION
16 2B1.1(B) (5). SO FOR THAT, THE ADJUSTMENT IS PLUS TWO POINTS.

17 THE OTHER ONE THAT MR. LIEW DOES NOT CONTEST, THE OTHER
18 ENHANCEMENT OR ADJUSTMENT IS OBSTRUCTION OF JUSTICE UNDER U.S.
19 SENTENCING GUIDELINE 3C1.1, AND FOR THAT THERE'S AN ADDITION
20 OF TWO POINTS.

21 THEREFORE, THE COURT WILL APPLY THESE ENHANCEMENTS.

22 THE COURT SHALL NOW ADDRESS MR. LIEW'S DISPUTES REGARDING
23 THE OTHER ENHANCEMENTS AS THEY ARE SET FORTH IN THE
24 PRESENTENCE REPORT.

25 FIRST, THE LEADER OR ORGANIZER UNDER U.S. SENTENCING

1 GUIDELINE LINE 3B1.1(A) AND THE POSSIBLE UPWARD ADJUSTMENT FOR
2 THAT LEADER OR ORGANIZER ENHANCEMENT IS FOUR POINTS.

3 THE PROBATION OFFICER RECOMMENDS AND THE GOVERNMENT ASKS
4 THAT THE COURT IMPOSE A FOUR-POINT ENHANCEMENT UNDER
5 SENTENCING GUIDELINE 3B1.1(A) WHICH PROVIDES FOR ENHANCEMENTS
6 IF A DEFENDANT HAS AN AGGRAVATING ROLE IN AN OFFENSE.

7 SECTION 3B1.1 PROVIDES THAT QUOTE, "IF THE DEFENDANT WAS AN
8 ORGANIZER OR LEADER OF A CRIMINAL ACTIVITY, THAT INVOLVE FIVE
9 OR MORE PARTICIPANTS OR WAS OTHERWISE EXTENSIVE, INCREASE BY
10 FOUR LEVELS", UNQUOTE.

11 IN ORDER TO EVALUATE A DEFENDANT'S ROLE IN THE OFFENSE,
12 THE COURT CONSIDERS QUOTE, "THE EXERCISE OF DECISION-MAKING
13 AUTHORITY, THE NATURE OF PARTICIPATION IN THE COMMISSION OF
14 THE OFFENSE, THE RECRUITMENT OF ACCOMPLICES, THE CLAIMED RIGHT
15 TO A LARGER SHARE OF THE FRUITS OF THE CRIME, THE DEGREE OF
16 PARTICIPATION IN PLANNING OR ORGANIZING THE OFFENSE, THE
17 NATURE AND SCOPE OF THE ILLEGAL ACTIVITY, AND THE DEGREE OF
18 CONTROL AND AUTHORITY EXERCISED OVER OTHERS", UNQUOTE. AND
19 THERE I WAS QUOTING SENTENCING GUIDELINE 3B1.1, APPLICATION
20 NOTE 4.

21 BASED ON THE EVIDENCE PRESENTED AT TRIAL, THE COURT
22 CONCLUDES THAT THESE FACTORS WEIGH IN FAVOR OF APPLYING THIS
23 ENHANCEMENT. MR. LIEW ARGUES THAT THE PANGANG, P-A-N-G-A-N-G
24 DEFENDANTS ARE THE TRUE ORGANIZERS OR LEADERS OF THE OFFENSE.

25 THE COURT REJECTS THIS ARGUMENT. UNDER THE GUIDELINES,

1 MORE THAN ONE PERSON CAN QUALIFY AS AN ORGANIZER OR LEADER,
2 AND I'M CITING THERE, AGAIN, THE ABOVE-MENTIONED SENTENCING
3 GUIDELINE.

4 MR. LIEW ALSO ARGUES THIS ENHANCEMENT SHOULD NOT APPLY
5 BECAUSE HE DID NOT EXERCISE CONTROL OVER MR. MAEGERLE,
6 M-A-E-G-E-R-L-E, MR. SPITLER, S-P-I-T-L-E-R, OR THE PANGANG
7 DEFENDANTS. HE ALSO CONTENDS THAT THE ENHANCEMENT SHOULD NOT
8 APPLY MERELY BECAUSE HE MANAGED A BUSINESS. A, QUOTE,
9 "PARTICIPANT", UNQUOTE, IS A PERSON, QUOTE, "WHO IS CRIMINALLY
10 RESPONSIBLE FOR THE COMMISSION OF THE OFFENSE BUT NEED NOT
11 HAVE BEEN CONVICTED. A PERSON WHO IS NOT CRIMINALLY
12 RESPONSIBLE FOR THE COMMISSION OF THE OFFENSE IS NOT A
13 PARTICIPANT", UNQUOTE.

14 THERE I WAS CITING GUIDELINE 3B1.1, APPLICATION NOTE 1.
15 PLEASE SEE ALSO UNITED STATES VERSUS SMITH, 719 F.3D 1120 AT
16 1126 DECIDED BY THE NINTH CIRCUIT IN 2013. AND THE COURT SAID
17 IN SMITH, QUOTE, "ANY PERSON WHO KNOWINGLY ABETS THE
18 DEFENDANT'S CONDUCT QUALIFIES AS A PARTICIPANT", UNQUOTE.

19 THE COURT CONCLUDES THAT THERE IS INSUFFICIENT EVIDENCE IN
20 THE RECORD TO CONCLUDE THAT EACH OF USAPTI'S EMPLOYEES MEET
21 THE GUIDELINE DEFINITION OF PARTICIPANTS. HOWEVER,
22 SECTION 3B1.1(A) IS WRITTEN IN THE DISJUNCTIVE AND IT PERMITS
23 A COURT TO IMPOSE THE FOUR-POINT ENHANCEMENT IF IT FINDS THAT
24 THE DEFENDANT WAS AN ORGANIZER OR LEADER OF CRIMINAL ACTIVITY
25 THAT INVOLVED FIVE OR MORE PARTICIPANTS OR, underscore or, WAS

1 OTHERWISE EXTENSIVE.

2 IN ORDER TO ASSESS QUOTE "WHETHER AN ORGANIZATION IS
3 OTHERWISE EXTENSIVE, ALL PERSONS INVOLVED DURING THE COURSE OF
4 THE ENTIRE OFFENSE ARE TO BE CONSIDERED. THUS, A FRAUD THAT
5 INVOLVED ONLY THREE PARTICIPANTS BUT USED THE UNKNOWING
6 SERVICES OF MANY OUTSIDERS COULD BE CONSIDERED EXTENSIVE".

7 AND I'M CITING THERE U.S. SENTENCING GUIDELINES
8 SECTION 3B1.1, APPLICATION NOTE 3, AND THEY STRESS THE WORDS
9 "UNKNOWING SERVICES" IN THAT QUOTATION.

10 BASED UPON THE TESTIMONY PRESENTED AT TRIAL, THE COURT
11 FINDS THAT MR. LIEW DID, IN FACT, UTILIZE HIS EMPLOYEES TO
12 ASSIST IN THE COMMISSION OF THE CHARGED CRIMES. THUS, EVEN IF
13 THOSE EMPLOYEES WERE NOT QUOTE "PARTICIPANTS" UNQUOTE, AS USED
14 IN THE GUIDELINES, THE COURT FINDS BY A PREPONDERANCE OF THE
15 EVIDENCE THAT THE CRIMINAL ACTIVITY WAS QUOTE "OTHERWISE
16 EXTENSIVE" UNQUOTE. THEREFORE, THE COURT WILL APPLY THE
17 FOUR-POINT ENHANCEMENT.

18 THE NEXT ENHANCEMENT THAT IS AT ISSUE HERE IS THE
19 SOPHISTICATED MEANS, WHICH IS U.S. SENTENCING GUIDELINE
20 SECTION 2T1.1, WHICH CALLS FOR A TWO-POINT ENHANCEMENT.

21 MR. LIEW ARGUES THAT THE COURT SHOULD NOT APPLY THE
22 TWO-POINT ENHANCEMENT FOR QUOTE, "SOPHISTICATED MEANS" TO THE
23 TAX CHARGES. QUOTE, "SOPHISTICATED MEANS MEANS ESPECIALLY
24 COMPLEX OR ESPECIALLY INTRICATE OFFENSE CONDUCT PERTAINING TO
25 THE EXECUTION OR CONCEALMENT OF AN OFFENSE. CONDUCT SUCH AS

HIDING ASSETS OR TRANSACTIONS OR BOTH THROUGH THE USE OF
FICTITIOUS ENTITIES, CORPORATE SHELLS, OR OFFSHORE FINANCIAL
ACCOUNTS ORDINARILY INDICATES SOPHISTICATED MEANS". AND I
WAS -- UNQUOTE. AND I WAS CITING THERE SENTENCING GUIDELINE
2T.1, APPLICATION NOTE 5.

ALTHOUGH MR. LIEW ARGUES THAT HE PARTICIPATED IN A JOINT
VENTURE WITH HIS BROTHER-IN-LAW AND USED COMPANIES IN
SINGAPORE TO DISTRIBUTE JOINT VENTURE PROCEEDS, THE COURT DOES
NOT FIND HIS EVIDENCE OF THIS FACT RELIABLE OR CREDIBLE.

FURTHER, HAVING HEARD THE EVIDENCE PRESENTED AT TRIAL, THE
COURT IS SATISFIED THAT THE EVIDENCE DEMONSTRATED THAT
MR. LIEW USED THE SINGAPOREAN COMPANIES AS A MEANS TO HIDE
ASSETS AND, THEREFORE, WILL APPLY THIS ENHANCEMENT TO THE TAX
CHARGES.

SO, IN SUMMARY, THE COURT CALCULATES MR. LIEW'S OFFENSE
LEVEL AS FOLLOWS BASED UPON THE ANALYSIS THAT I JUST SET
FORTH:

SO, WE START WITH THE GROUP ONE OFFENSES, COUNTS 1 THROUGH
14. THE BASE OFFENSE LEVEL IS SIX, THE AMOUNT OF LOSS
ENHANCEMENT IS 22, THE INVOLVEMENT OF OR THE FACTOR OF THE
FOREIGN GOVERNMENT OR FOREIGN INSTRUMENTALITY IS PLUS TWO, THE
ROLE IN THE OFFENSE ENHANCEMENT IS PLUS FOUR, AND THE
OBSTRUCTION OF JUSTICE IS PLUS SIX -- PLUS TWO, EXCUSE ME, FOR
A TOTAL ADJUSTED LEVEL OF 36.

NOW WITH RESPECT TO GROUP TWO OFFENSES, WHICH IS COUNT 15

1 THROUGH 19, THE BASE LEVEL OFFENSE LEVEL IS 24, THE CRIMINAL
2 ACTIVITY ENHANCEMENT IS PLUS TWO, THE SOPHISTICATED MEANS
3 ENHANCEMENT IS PLUS TWO, FOR AN ADJUSTED OFFENSE LEVEL OF 28.

4 FOR THE GROUP THREE OFFENSES, COUNTS 20 THROUGH 22, THE
5 BASE OFFENSE LEVEL IS SIX, THE AMOUNT OF LOSS ENHANCEMENT IS
6 TEN, AND THE ADJUSTED OFFENSE LEVEL IS 16.

7 THE COURT THEN CONDUCTS ITS MULTIPLE-COUNT ADJUSTMENT.
8 FOR THE GROUP ONE OF COUNTS, THE ADJUSTED OFFENSE LEVEL IS 36,
9 WHICH IS ONE UNIT. FOR GROUP TWO, THE ADJUSTED OFFENSE LEVEL
10 IS 28 OR .5 UNITS. FOR GROUP THREE, THE ADJUSTED OFFENSE
11 LEVEL IS 16 OR ZERO UNITS. THE TOTAL UNITS ARE 1.5. THE
12 GREATER OF THE OFFENSE LEVELS IS 36. AND UNDER U.S.
13 SENTENCING GUIDELINE 3D1.4, WE INCREASE THE OFFENSE LEVEL BY
14 ONE RESULTING IN AN ADJUSTED -- COMBINED ADJUSTED OFFENSE
15 LEVEL OF 37. UNDER THE THEN APPLICABLE GUIDELINES THAT WERE
16 IN EFFECT, THE ONES THAT THE COURT INDICATED IT WOULD FOLLOW,
17 WITH A CRIMINAL HISTORY CATEGORY OF I AND AN ADJUSTED OFFENSE
18 LEVEL OF 32, THE GUIDELINE RANGE IS 210 TO 262 MONTHS.

19 NOW, I WANT TO DISCUSS USAPTI. I WANT TO TURN TO THAT
20 DEFENDANT.

21 WITH RESPECT TO USAPTI, THE COURT CONCLUDES THAT THE BASE
22 OFFENSE LEVEL IS SIX. FOR THE REASONS DISCUSSED AT THE OUTSET
23 OF THESE PROCEEDINGS, THE COURT APPLIES A 22-POINT ENHANCEMENT
24 FOR THE AMOUNT OF LOSS. USAPTI DOES NOT OBJECT TO THE
25 TWO-POINT ENHANCEMENT PURSUANT TO GUIDELINE 2B1.1(B) (5) (B),

1 AND THE COURT APPLIES THAT ENHANCEMENT.

2 USAPTI ARGUES THAT IT SHOULD NOT RECEIVE AN ENHANCEMENT TO
 3 THE OFFENSE LEVEL OR TO ITS CULPABILITY LEVEL FOR OBSTRUCTION
 4 OF JUSTICE PURSUANT TO U.S. SENTENCING GUIDELINE 3C1.1, AND
 5 U.S. SENTENCING GUIDELINE 8C2.5(E).

6 SECTION 8C2.5(E) PROVIDES THAT QUOTE, "IF THE ORGANIZATION
 7 WILLFULLY OBSTRUCTED OR IMPEDED, ATTEMPTED TO OBSTRUCT OR
 8 IMPEDE, OR AIDED AND ABETTED OR ENCOURAGED OBSTRUCTION OF
 9 JUSTICE DURING THE INVESTIGATION, PROSECUTION, OR SENTENCING
 10 OF THE INSTANT OFFENSE, OR WITH KNOWLEDGE OF -- WITH KNOWLEDGE
 11 THEREOF FAILED TO TAKE REASONABLE STEPS TO PREVENT SUCH
 12 OBSTRUCTION OR IMPEDIMENT OR ATTEMPTED OBSTRUCTION OR
 13 IMPEDIMENT, ADD THREE POINTS," UNQUOTE TO THE CULPABILITY
 14 SCORE.

15 SECTION 3C1.1 CONTAINS SUBSTANTIALLY SIMILAR LANGUAGE AND
 16 PROVIDES FOR A TWO-POINT ENHANCEMENT TO THE OFFENSE LEVEL.

17 USAPTI ARGUES THAT IT DOES NOT QUALIFY FOR AN OBSTRUCTION
 18 OF JUSTICE ENHANCEMENT BECAUSE IT WAS ONLY CONVICTED ON COUNT
 19 10, WHICH RELATED TO A FILING -- TO FILING A FALSE ANSWER IN A
 20 RELATED CIVIL CASE.

21 USAPTI CONTENDS THAT THAT EVENT TOOK PLACE LONG BEFORE
 22 USAPTI WAS AWARE OF THE CRIMINAL PROCEEDINGS. QUOTE,
 23 "OBSTRUCTIVE CONDUCT CAN VARY WIDELY IN NATURE, DEGREE OF
 24 PLANNING, AND SERIOUSNESS. APPLICATION NOTE 4 SETS FORTH
 25 EXAMPLES OF THE TYPES OF CONDUCT TO WHICH THIS ENHANCEMENT IS

1 INTENDED TO APPLY", UNQUOTE.

2 IT'S GUIDELINE -- I WAS JUST QUOTING GUIDELINE 3C1.1,
3 APPLICATION NOTE 3.

4 APPLICATION NOTE 4, IN TURN, INCLUDES QUOTE, "PRODUCING OR
5 ATTEMPTING TO PRODUCE A FALSE, ALTERED, OR COUNTERFEIT
6 DOCUMENT OR RECORD DURING AN OFFICIAL INVESTIGATION OR
7 JUDICIAL PROCEEDING", UNQUOTE, AS AN EXAMPLE OF COVERED
8 CONDUCT. I WAS QUOTING GUIDELINE 3C1.1, APPLICATION NOTE
9 4 (C) .

10 THE GOVERNMENT HAS NOT ADDRESSED USAPTI'S OBJECTIONS TO
11 APPLICATION OF THIS ENHANCEMENT. ON THE FACTS OF THIS CASE,
12 THE COURT CONCLUDES THAT THE GOVERNMENT HAS NOT MET ITS BURDEN
13 TO SHOW THAT BASED ON THE CONDUCT FOR WHICH THE JURY CONVICTED
14 USAPTI, THIS ENHANCEMENT SHOULD APPLY.

15 ACCORDINGLY, THE COURT WILL NOT APPLY A TWO-POINT
16 ENHANCEMENT TO THE OFFENSE LEVEL OR A THREE-POINT ENHANCEMENT
17 TO USAPTI'S CULPABILITY LEVEL.

18 THEREFORE, THE COURT CALCULATES USAPTI'S OFFENSE LEVEL AS
19 FOLLOWS: BASE OFFENSE LEVEL OF SIX, AN AMOUNT OF LOSS
20 ENHANCEMENT OF 22, THE FOREIGN GOVERNMENT ENHANCEMENT OF TWO,
21 FOR AN ADJUSTED OFFENSE LEVEL OF 30. BASED UPON THE OFFENSE
22 LEVEL, THE BASE FINE IS \$10,500,000.

23 THE COURT FINDS THAT USAPTI'S CULPABILITY LEVEL IS SIX,
24 AND PURSUANT TO GUIDELINE SECTION 8C2.6, WITH A CULPABILITY
25 LEVEL OF SIX, THE MINIMUM MULTIPLIER IS 1.2 AND THE MAXIMUM

1 MULTIPLIER IS 2.4. THE APPLICABLE GUIDELINE FINE RANGE,
2 THEREFORE, IS \$12,600,000 TO \$25,200,000.

3 BEFORE THE COURT BEGINS ITS ANALYSIS OF THE
4 SECTION 3553(A) FACTORS HAVING CONCLUDED ITS ANALYSIS UNDER
5 THE GUIDELINES, AND FINALLY IMPOSES SENTENCE ON THE
6 DEFENDANTS, THE COURT WILL NOW PROVIDE MR. LIEW AND USAPTI
7 WITH THEIR OPPORTUNITY TO ELOCUTE TO THE COURT.

8 MR. LIEW, WOULD YOU PLEASE COME FORWARD WITH YOUR COUNSEL.

9 **MR. GASNER:** THANK YOU, YOUR HONOR. I APPRECIATE THE
10 OPPORTUNITY TO BE HEARD.

11 I ALSO APPRECIATE THE COURT'S STRUGGLE WITH THE LOSS TO DU
12 PONT ISSUE THAT REALLY IS WHAT HAS US, UNDER THE GUIDELINES,
13 IN THE STRATOSPHERE IN A CASE THAT IT REALLY HINGES ON
14 INTELLECTUAL PROPERTY.

15 THE COURT KNOWS THAT FEDERAL COURTS DEAL WITH INTELLECTUAL
16 PROPERTY THAT IS FAR MORE CUTTING EDGE. THIS IS A CASE ABOUT
17 WHITE PAINT PIGMENT. IT HAS BEEN AROUND SINCE THE 1950'S. I
18 AM SORRY THAT THE COURT DIDN'T FIND MR. COOPER MORE
19 PERSUASIVE, BUT IT WAS UNDISPUTED THAT THERE IS A VAST AMOUNT
20 OF LITERATURE AND PATENTS, BOTH EXPIRED AND UNEXPIRED, THAT
21 ARE OUT THERE. SO WE ARE TALKING ABOUT TECHNOLOGY THAT HAS
22 BEEN LARGELY DISCLOSED.

23 NOW, THAT'S NOT TO SAY THAT THERE MIGHT NOT BE SOME TRADE
24 SECRETS THAT ARE --

25 **THE COURT:** I RECENTLY READ IN THE NEWSPAPER SOME LAW

1 FIRM WAS SAYING THAT THE -- COMPARING PUBLICLY DISCLOSED KINDS
2 OF TRADE SECRETS, COMPARING APPLES AND ORANGES IS
3 INAPPROPRIATE.

4 DID I READ THAT SOMEWHERE THAT SOME GREAT LAW FIRM SAID
5 THAT?

6 **MR. GASNER:** IT WASN'T ME, YOUR HONOR.

7 **THE COURT:** YOUR FIRM SAID IT.

8 **MR. GASNER:** WELL, I MEAN IT IS APPLES AND ORANGES IN
9 ONE SENSE AND YOU HAVE TO LOOK AT WHAT THE PATENT DISCLOSURE
10 IS AND WHAT THE TRADE SECRET IS. YOU CAN'T DO IT IN A KIND OF
11 GENERALIZED WAY, BUT THE FACT IS, AND THE COURT WELL KNOWS, A
12 DISCLOSURE IN A PATENT DOES VITIATE TRADE SECRET PROTECTION
13 FOR WHAT IS DISCLOSED. THAT IS BEDROCK LAW.

14 IT'S IRONIC, I THINK, IN THIS NEW WORLD OF THE
15 CRIMINALIZATION OF TRADE SECRETS THAT WE PUT PLAINTIFFS TO
16 SUCH A BURDEN TO PROVE ANY AMOUNT OF MONEY DAMAGES. THEY HAVE
17 TO IDENTIFY THE TRADE SECRET WITH PARTICULARITY, THEY HAVE TO
18 SHOW CAUSATION, THEY HAVE TO PUT ON EXPERT TESTIMONY, THEY
19 HAVE TO LINK IT UP IN ORDER TO JUST GET MONEY.

20 BUT IN THIS BRAVE NEW WORLD OF CRIMINALIZING OF TRADE
21 SECRETS, IT APPEARS THAT WE DO FAR LESS IN THE SENSE THAT HERE
22 WE ARE AT SENTENCING, THE GOVERNMENT VERY ARTFULLY CHARGED
23 THIS CASE SO THEY DIDN'T HAVE TO PROVE A TRADE SECRET AS TO
24 THE GRAND CONSPIRACY. AS TO THE POSSESSION COUNTS, WHICH THE
25 COURT VERY APPLY LOOKED AT FOR THIS IDEA OF HARM TO DU PONT,

1 IT WAS VERY, VERY LIMITED.

2 SO, ON ONE HAND YOU HAD KIND OF THE GRAND CONSPIRACY THAT
3 DIDN'T REQUIRE ANY PROOF OF A TRADE SECRET, LET ALONE ITS
4 VALUE. AND ON THE OTHER HAND, YOU HAD AT THE MICRO LEVEL
5 THESE THREE PIECES, TRADE SECRETS 2, 3, AND 4 THAT WERE
6 BANDIED AROUND THE COURT A LOT. TRADE SECRET 5 WAS NEVER IN
7 MR. LIEW'S POSSESSION.

8 THE GOVERNMENT VERY ARTFULLY PRESENTED ITS CASE, BUT IT
9 WAS BASED ON ADMISSIBLE EVIDENCE. AND WE NOW KNOW A LOT MORE
10 BASE ON THE FULL PICTURE THAT THE COURT HAS FROM SENTENCING.

11 AND THE FOCUS, EITHER UNDER THE GUIDELINES OR UNDER 3553,
12 THE FOCUS REALLY IS THE LOSS TO THE VICTIM. I MEAN, IN
13 DECIDING HOW SERIOUS A TRADE SECRET CRIME TRULY IS, WHAT THE
14 GUIDELINES SAY IS YOU LOOK AT THE HARM TO THE VICTIM. THAT'S
15 THE METRIC.

16 AND THE GUIDELINES UNDER 2B1.1, IT'S BEEN ROUNDLY
17 CRITICIZED. QUANTITY ISN'T EVERYTHING. AND I THINK THE COURT
18 HAS APTLY STRUGGLED WITH THAT IN MANY CONTEXT. WHAT WE ARE
19 LOOKING FOR IN SENTENCING IS JUSTICE. AND JUSTICE IS
20 INDIVIDUALIZED. AND SHEER QUANTITY ISN'T EVERYTHING.

21 I APPRECIATE THAT THE COURT FOLLOWED THE APPLICATION NOTE
22 THE BEST THAT THE COURT HAD TO FOLLOW IN THE GUIDELINES IN
23 TERMS OF EVENTUALLY ENDING UP WITH GAIN. BUT IF I CAN TAKE
24 JUST A MINUTE TO TALK ABOUT THE LOGIC OF THAT.

25 I THINK THE ONE THING WE KNOW IS THE \$28 MILLION IS NOT

1 THE LOSS TO DU PONT. IT JUST ISN'T. THERE WERE PARTS OF THIS
2 PROJECT THAT HAD NOTHING TO DO WITH BOB MAEGERLE. THERE WAS
3 ORDER HANDLING. THERE WERE OTHER INSTRUMENTATIONS AND WERE
4 COMPLETELY SEPARATE CONSULTANTS WERE HIRED. IT WASN'T ALL BOB
5 MAEGERLE.

6 INTERESTINGLY, TOO, THE GOVERNMENT CONCEDED WHEN I TRIED
7 TO ARGUE THAT WHAT DU PONT WAS TRYING TO DO WAS TO RESTRICT
8 ITS ENGINEERS. WOULD FIRE THEM, AND THEN SAY, BUT YOU CAN'T
9 HAVE A LIVING AFTER WE'VE DOWNSIZED YOUR JOB.

10 THE GOVERNMENT STOOD UP AND SAID, NO, WE ARE NOT SAYING
11 THAT. MR. MAEGERLE AND MR. SPITLER ARE FREE TO WORK IN THE
12 FIELD. THEY WERE FREE TO WORK ON THIS PROJECT. WHAT THEY
13 COULDN'T DO WAS USE TRADE SECRETS. FAIR ENOUGH.

14 AND THE TRADE SECRETS THAT WERE -- THAT WERE TALKED ABOUT
15 IN THIS CASE WERE SEVERAL. TRADE SECRET 2 IS THE ONE THAT GOT
16 BANDIED AROUND THE MOST, THE LARGE OXIDATION SPREADSHEET OR
17 FLOW SHEET THAT THE GOVERNMENT THEN LINKED TO TIM SPITLER,
18 CALLED 'EM FLOW SHEET TIM, AND ALL OF THAT. THAT WAS THE MAIN
19 ARGUMENT FOR STEALING WAS -- WE JUST HEARD A LOT OF THAT.

20 TRADE SECRET 3, THAT WAS THE REASON FOR CALLING
21 DR. DIEMER. WE SPENT A DAY WITH HIM TALKING ABOUT THIS ONE
22 PIECE OF PAPER.

23 WE ALSO HEARD FROM MR. THONGTHAWEE. HE COULDN'T FIGURE
24 OUT -- HE COULDN'T MAKE HEADS OR TAILS OUT OF IT.

25 WHAT THE EVIDENCE HERE SHOWED WAS A LOT OF POSSESSION

1 EVIDENCE. AND I SUBMIT TO THE COURT THAT POSSESSION DOESN'T
2 HURT ANYBODY. THE GOVERNMENT TRIES TO GET AROUND THIS BY
3 SAYING, WELL, IT'S STOLEN.

4 NOW, WHEN SOMEBODY STEALS A PIECE OF JEWELRY IN A
5 BURGLARY. THE THIEF HAS IT AND THE HOMEOWNER DOESN'T. SO WE
6 ORDINARILY THINK OF STEALING AS HURTING THE VICTIM. BUT WHEN
7 YOU STEAL A COPY OR YOU OBTAIN A COPY, AND WE KNOW FROM THE
8 HOUSTON DECLARATION AND ALL THAT, HOW THIS REALLY HAPPENED --
9 THESE WERE OLD DOCUMENTS THAT DU PONT HAD SHIPPED TO
10 MR. SPITLER'S HOUSE LONG AGO, THEY SAT IN HIS CLOSET FOR MANY,
11 MANY YEARS. SITTING IN HIS CLOSET, THOSE PIECES OF PAPER DID
12 NO HARM TO DU PONT.

13 IN FACT, THE COURT MAY RECALL PAUL REIS WAS A MEMBER OF
14 THE CIERRA GROUP. THE COURT ACCEPTED A GUILTY PLEA FROM TZE
15 CHAO WHO'S THE HEAD OF THE CIERRA GROUP. AND THEY WERE
16 BROUGHT INTO THIS VENTURE, THIS BUSINESS DEAL IN ORDER TO VET
17 MR. LIEW'S WORK. TZE CHAO WAS A SENIOR SCIENTIST AT DU PONT.
18 JAMES REEVES WAS A PART OF THAT GROUP AND PAUL REIS WAS A
19 MEMBER OF THAT GROUP. PAUL REIS HAD NINE BIG P&ID CHARTS. I
20 HAVE THEM HERE, I CAN UNFURL THEM FOR THE COURT. IF THE COURT
21 REMEMBERS, WE TRIED TO GET THAT INTO EVIDENCE, BUT WE
22 COULDN'T.

23 FOR SENTENCING, I THINK THE COURT NEEDS TO CONSIDER
24 POSSESSION DOESN'T HURT ANYBODY. AT LEAST IN INTELLECTUAL
25 PROPERTY. IT SAT -- THESE PIECES OF PAPER SAT IN

1 MR. SPITLER'S CLOSET FOR -- LOOKS LIKE 14 YEARS. AND, YES, HE
2 GAVE THEM TO MR. LIEW. MR. LIEW PAID HIM SOME MONEY AS A
3 CONSULTANT, AND THAT ALL IS -- JURY FOUND HIM GUILTY. WE ARE
4 NOT TRYING TO RUN AWAY FROM THE JURY'S VERDICT. THEY FOUND
5 HIM GUILTY OF POSSESSION.

6 BUT POSSESSION OF A TRADE SECRET ONLY MEANS THAT THE JURY
7 FOUND THAT IT HAS SOME ACTUAL OR POTENTIAL VALUE BY VIRTUE OF
8 IT BEING KEPT SECRET. THEY COULD HAVE FOUND THESE THINGS WERE
9 WORTH 23 CENTS. WE ARE NOT ARGUING WITH THE VERDICT, BUT WHAT
10 WE ARE TRYING TO DO IS ADDRESS THE ISSUE, WHICH IS VITAL FOR
11 SENTENCING AND WASN'T ADDRESSED BY THE JURY, AND THAT IS WHAT
12 WAS THE HARM TO DU PONT.

13 AND INTERESTINGLY, I WANT TO PICK UP, TOO, ON WHAT THE
14 COURT SAID EARLIER IN TALKING ABOUT \$28 MILLION AS GAIN THAT
15 THE REASON, AT LEAST IN THE FORFEITURE CONTEXT, I GET THAT
16 FORFEITURE IS A BROADER STANDARD AND IT TALKS ABOUT PROCEEDS
17 DIRECT OR INDIRECT. FAIR ENOUGH. BUT THE COURT DID TALK
18 ABOUT LOOKING AT THE EVIDENCE IN THIS CASE AT TRIAL AND
19 FEELING THAT BECAUSE MR. LIEW'S RELATIVELY LACK OF EXPERIENCE
20 IN TIO2, THE COURT COULD BELIEVE, BASED ON THE TRIAL, THAT HE
21 WAS HIRED BECAUSE OF TRADE SECRETS.

22 I ASSUME THAT THAT COMES IN PART FROM THE 2004 LETTER THAT
23 WAS TALKED A LOT ABOUT. WE CALLED IT A PUFFERY LETTER, BUT
24 THAT LETTER TALKED ABOUT THIS TECHNOLOGY NOT BEING GENERALLY
25 AVAILABLE. AND I CAN UNDERSTAND THE COURT LOOKING AT THAT.

1 WE BELIEVE THAT THE LETTER READ AS A WHOLE DOESN'T SUPPORT
2 THAT INFERENCE, BUT BE THAT AS IT MAY, BUT HERE WE ARE AT
3 SENTENCING, AND WE ARE ENTITLED TO LOOK AT MORE THAN THAT.

4 WHAT WE KNOW, FOR EXAMPLE, FROM MR. KI (PHONETIC), WHO IS
5 ONE OF THE HEADS AT PANGANG -- WHAT WAS SO UNUSUAL ABOUT THIS
6 TRIAL WAS THAT HALF THE CONSPIRACY WASN'T HERE. THE COURT
7 RULED ON THE SERVICE OF PROCESS HARD FOUGHT OVER YEARS THAT
8 THESE OTHER CONSPIRATORS, THE COMPANY AND ALL THOSE INDIVIDUAL
9 DEFENDANTS, HAD NOT BEEN PROPERLY SERVED.

10 SO WE TRIED THIS CASE WITH HALF THE PARTICIPANTS NOT HERE.
11 ACTUALLY, TWO-THIRDS BECAUSE TZE CHAO NEVER SHOWED UP, NO
12 WITNESSES FROM THE CIERRA GROUP, AND WE TRIED THE CASE IN A
13 BIT OF A BACKWATER, JUST LOOKING AT MR. LIEW'S PIECE OF THIS.

14 BUT JUST TO -- IN THE SENTENCING CONTEXT, THE COURT IS
15 ENTITLED TO LOOK AT MORE THAN WHAT WE HEARD AT TRIAL. AND ONE
16 OF THE THINGS THAT WHEN THE GOVERNMENT HAD ALL THESE PANGANG
17 PEOPLE HERE IN THE UNITED STATES AT THE ROADWAY INN, YOU KNOW,
18 RIGHT HERE IN THE EAST BAY, THEY INTERVIEWED ZHONG KI
19 (PHONETIC) WHO WAS ONE OF THE HIGHEST RANKING PERSON THAT THEY
20 HAD HERE. AND WHAT HE SAID TO THE FBI WAS HE AND HIS
21 COLLEAGUES THOUGHT THE TECHNOLOGY PROVIDED BY USAPTI WAS
22 ALREADY IN THE PUBLIC SPHERE.

23 SO IN THE SENTENCING CONTEXT, I DON'T THINK IT'S FAIR FOR
24 THE COURT TO CONCLUDE THAT BASED ON THE EVIDENCE AT TRIAL --
25 MOST OF THE WITNESSES WEREN'T HERE -- THAT THE ENTIRETY OF

1 THIS \$28 MILLION CAN BE LINKED IN A REAL FACTUAL WAY TO THE
2 OBTAINING OF THIS CONTRACT.

3 SECOND POINT THAT IS FROM THE EVIDENCE THAT WASN'T AT
4 TRIAL, MR. SPITLER, DECEASED, RAISED IN THE REBUTTAL CLOSING
5 ARGUMENT BY THE GOVERNMENT AS KIND OF THE LINCHPIN OF THIS
6 THING, WHAT HE TOLD THE FBI WAS THAT THE BOXES THAT HE HAD
7 BEEN SENT VOLUNTARILY BY DU PONT, HE GAVE ACCESS TO MR. LIEW
8 IN 2010. THAT IS YEARS AFTER THE CONTRACTS WERE OBTAINED AND
9 IT WAS AFTER THE 30K PROJECT HAD BEEN DONE.

10 SO I THINK WE KNOW AN AWFUL LOT OF THIS \$28 MILLION REALLY
11 CAN'T BE FAIRLY ATTRIBUTED TO MR. LIEW. AND I UNDERSTAND THE
12 COURT'S RULING ON THE GUIDELINES, BUT THANK GOD FOR BOOKER.
13 BECAUSE THE COURT DOESN'T NEED TO JUST SLAVISHLY FOLLOW THE
14 GUIDELINES.

15 I UNDERSTAND THAT UNDER CARTY, THAT'S THE STARTING POINT
16 FOR THE COURT. BUT I DO THINK THAT IF THE COURT LOOKED AT ALL
17 THE MATERIALS THAT WE PROVIDED TO TRY TO FLUSH OUT THE REST OF
18 THE STORY, LIKE PAUL HARVEY USED TO SAY ON THE RADIO, IT IS
19 NOT FAIR TO REALLY VIEW THIS AS A 28 MILLION-DOLLAR CRIME. IT
20 REALLY ISN'T.

21 AND THAT'S HOW WE GET INTO THE STRATOSPHERE. YES, ON THE
22 TAX SIDE, THERE WAS A MONEY SIDE OF THIS CASE AND WE HAVE
23 RECOMMENDED A SENTENCE 63 TO 78 MONTHS THAT INCLUDES THE
24 OBSTRUCTION, THE BANKRUPTCY, THE TAX, AND A PROPERLY LOW
25 VALUATION FROM A REALISTIC POINT OF VIEW.

1 THE OTHER THING THAT I WANT TO POINT OUT IN TERMS OF THE
2 CAUSATION OF -- OF HOW THINGS CAME ABOUT HERE IS THIS LETTER
3 THAT I JUST GOT FROM DU PONT THAT HAD BEEN SENT TO
4 MS. GOLDSBERRY, BUT I JUST GOT BEFORE. AND -- I JUST GOT IT
5 YESTERDAY.

6 AND WHAT IT TALKS ABOUT IS THAT IT IS NOT ENOUGH, IT OFTEN
7 ISN'T ENOUGH TO STEAL THE DOCUMENTS. THIS WORD "STEAL", HOW
8 MANY TIMES DO WE HAVE TO HEAR THAT EVEN THOUGH THE GOVERNMENT
9 KNOWS THAT'S NOT AN ACCURATE CHARACTERIZATION OF HOW
10 MR. SPITLER GOT THESE DOCUMENTS.

11 NONETHELESS, DU PONT ADOPTS THAT RHETORIC. IT ISN'T
12 ENOUGH TO STEAL THE DOCUMENTS. UNSCRUPULOUS COMPETITORS NEED
13 THE KNOW HOW THE --

14 **THE COURT:** SLOW DOWN. I DO THE SAME THING. WHEN I
15 READ, I SPEED UP. IF YOU ARE GOING TO READ FROM DU PONT'S --
16 PLEASE MAKE BELIEVE, WHICH YOU ARE, DICTATING TO THE YOUNG
17 LADY DOWN THERE.

18 **MR. GASNER:** MY APOLOGIES TO THE YOUNG LADY.

19 "IT ISN'T ENOUGH TO STEAL THE DOCUMENTS.

20 UNSCRUPULOUS COMPETITORS NEED TO KNOW HOW AS WELL IN
21 THE FORM OF EXPERIENCE, SCIENTISTS, AND ENGINEERS WHO
22 HAVE ACTUALLY APPLIED THE TECHNOLOGY. THAT IS
23 APPARENTLY WHY ROBERT MAEGERLE AS WELL AS TIMOTHY
24 SPITLER AND TZE CHAO WERE CRITICAL TO THE CRIMINAL
25 CONSPIRACY HERE."

1 I WILL TALK MORE ABOUT THEIR RELATIVE INVOLVEMENT IN A
2 MINUTE, BUT JUST TO PAUSE THERE, IT IS UNDISPUTED THAT
3 MR. LIEW WAS ENTITLED TO HIRE BOB MAEGERLE. HE WAS NOT
4 PERMANENTLY UNEMPLOYABLE BECAUSE HE HAD WORKED AT DU PONT 15
5 YEARS BEFORE ALL OF THIS.

6 TIM SPITLER WAS ENTITLED TO CONSULT. THEY NEEDED TO STEER
7 CLEAR OF TRADE SECRETS. THERE ARE BIG FIGHTS IN CIVIL CASES
8 OVER WHAT'S A TRADE SECRET AND WHAT ISN'T. WE NEVER REALLY
9 HAD THAT FIGHT DURING THE TRIAL BECAUSE OF THE WAY THE
10 GOVERNMENT CHARGED THE CASE.

11 I UNDERSTAND THE COURT DOESN'T WANT TO DO AN EVIDENTIARY
12 HEARING AND FEELS THAT IT KNOWS ENOUGH FROM THE TRIAL, BUT I
13 WOULD REALLY EMPHASIZE THAT IF WE REALLY BEAR DOWN ON WHAT ARE
14 THE TRADE SECRETS HERE AND HOW WERE THEY USED, EVEN IF WE TAKE
15 EVERYTHING THE GOVERNMENT PROVED AT TRIAL, TRADE SECRET 2, 3,
16 4, AND EVEN 5, FIVE IS THAT BASIC DATA MANUAL APPARENTLY
17 MR. MAEGERLE LOOKED AT EVERY ONCE IN A WHILE AND TOOK SOME
18 SHORTCUTS WITH BASED ON THE EVIDENCE, BUT THAT WASN'T
19 SOMETHING MR. LIEW HAD.

20 THERE WAS NO EVIDENCE THAT ANYTHING FOUND ITS WAY INTO THE
21 WORK PRODUCT. THE ULTIMATE TRANSMISSION OF WORK PRODUCT TO
22 PANGANG WAS IN THE FORM OF THE PLANS AND SPECIFICATIONS AND
23 OTHER DOCUMENTS THAT WERE THE MILESTONES FOR GETTING PAID
24 UNDER THE CONTRACT. NONE OF THE GOVERNMENT WITNESSES EVER
25 LOOKED AT ANY OF THAT TO SEE WHAT WAS TRANSMITTED.

1 AND -- AND SO THERE WAS NO PROOF, WHETHER IT'S BY A
2 PREPONDERANCE OR CLEAR AND CONVINCING THAT ANYTHING WAS
3 CONVEYED TO PANGANG THAT WAS ACTUALLY A TRADE SECRET. THAT IS
4 THE REALITY OF HOW THE GOVERNMENT CHOSE TO STRUCTURE THE
5 CHARGES IN THE INDICTMENT AND HOW THEY TRIED THE CASE.

6 THAT'S WHY WE THINK THAT IN VALUING LOSS TO DU PONT, THIS
7 IS MORE OF A POSSESSION CASE. IT'S WHERE PEOPLE, YES, HAD
8 PIECES OF PAPER THAT THEY SHOULDN'T HAVE HAD, BUT WHAT HARM
9 FLOWED TO DU PONT FROM THAT?

10 DU PONT IS NOT IN THE BUSINESS OF DESIGNING PLANS FOR
11 OTHER PEOPLE. THEY SIMPLY DON'T DO THAT. THEY SELL TIO2, BUT
12 NOTHING STOPS THEM FROM SELLING TIO2 IN CHINA. AND THE
13 PRELIMINARY PLANS THAT MR. LIEW DREW UP PURSUANT TO THE
14 ENGINEERING CONTRACTS ARE MILES AWAY FROM ANY FRUITION.

15 SO WHAT WE ARE TALKING ABOUT IS HIS POSSESSION OF PIECES
16 OF PAPER AND THEIR CIRCULATION BETWEEN HIM AND MR. MAEGERLE.
17 THE KEY JUNCTURE IS WHAT FOUND ITS WAY INTO THE PLANS FOR --
18 FOR PANGANG, WHAT ACTUALLY GOT TRANSMITTED. WHAT WE KNOW
19 THERE, TOO, MR. REEVES HAS A FASCINATING EMAIL THAT WE HAVE
20 SUBMITTED TO THE COURT IN WHICH HE SAYS HE WENT TO JINZHOU IN
21 1999 AND THEY HAVE REMARKABLY GOOD TECHNOLOGY, ESSENTIALLY A
22 REPLICA OF ANTIOCH. ANTIOCH WAS AN OLD DU PONT PLANT THAT WAS
23 THE MODEL FOR WHAT WAS SOLD TO SHERWIN-WILLIAMS AT ASHTABULA.

24 WHAT MR. REEVES, A SENIOR FELLOW, REPORTED BACK TO CONNIE
25 HUBBARD, YOU REMEMBER CONNIE HUBBARD WAS THE --

1 **THE COURT:** -- PERSON.

2 **MR. GASNER:** WHAT HE SAID IN THAT EMAIL IS I HAVE
3 BEEN TO JINZHOU IN 1999. THEY HAVE A VIRTUAL REPLICA OF
4 ANTIOCH.

5 SO, AGAIN, IF WE ARE LOOKING AT HARM CAUSED BY THIS MAN
6 AND THIS COMPANY, WE HAVE TO TAKE INTO EFFECT WHAT IS IN THE
7 PUBLIC RECORD, WHAT DID CHINA ALREADY HAVE, AND THINK ABOUT
8 WHAT HARM DID HE DO WHEN HE SENT HIS PLANS OVER, WHICH THE
9 GOVERNMENT HASN'T COME CLOSE TO PROVING CONTAINED EVEN A
10 SINGLE TRADE SECRET.

11 **THE COURT:** YOU'RE SPEAKING VERY ELOQUENTLY BUT YOU
12 ARE REPLICATING, TO USE YOUR TERM, WHAT WAS IN YOUR PAPERS.
13 AND I HAVE READ THOSE FOR MANY, MANY WEEKS AND I HAVE HEARD
14 THESE ARGUMENTS BEFORE. I'M NOT CUTTING YOU OFF, BUT IF YOU
15 HAVE SOMETHING NEW OR ADDITIONAL THAT YOU WANT TO ADD, YOU MAY
16 DO SO, AND THEN I WILL HEAR FROM YOUR CLIENT AND I'LL HEAR
17 BRIEFLY FROM THE GOVERNMENT BECAUSE I ALLOWED YOU TO GO ON AND
18 NORMALLY I DON'T WHEN I HAVE SUCH REALLY EXTENSIVE AND
19 ELOQUENTLY WRITTEN PAPERS FROM THE PARTIES.

20 **MR. GASNER:** THANK YOU, YOUR HONOR.

21 LET ME MAKE ONE OTHER POINT. AND THAT IS, I KNOW IT'S
22 IMPORTANT TO THE COURT TO DO JUSTICE DISTRIBUTABLY, THAT IS,
23 IN THIS KIND OF CASE, MULTIPLE DEFENDANTS, I KNOW THAT THE
24 COURT CARES ABOUT JUSTICE ACROSS THE BOARD.

25 AND WHERE WE ARE HEADED IN THIS CASE IS A VERY UNFAIR

1 RESOLVE. WE'VE GOT VERY HIGH GUIDELINES THAT HAVE US TALKING
2 ABOUT SENTENCES THAT ARE USUALLY RESERVED FOR RAPE AND MURDER,
3 AND JUST THE MOST HEINOUS KINDS OF VIOLENT CRIMES.

4 AND WE LEAVE IT TO YOUR HONOR'S GOOD JUDGMENT ABOUT HOW TO
5 DEAL WITH THAT. BUT THE OTHER PIECE OF THIS IS HOW IS THE
6 COURT GOING TO SENTENCE THE OTHERS INVOLVED HERE. WE HAVE
7 ASKED FOR A CONTINUANCE; THE COURT DENIED IT. BUT THE
8 HANDWRITING IS ON THE WALL. THE GOVERNMENT HAS GONE WAY OUT
9 OF ITS OWN WAY TO POSTPONE THE SENTENCING OF TZE CHAO. AND IF
10 THE COURT READS DU PONT, THE VICTIM STATEMENT HERE, IT IS ALL
11 ABOUT TZE CHAO, TIMOTHY SPITLER, AND MR. MAEGERLE. AND I WISH
12 THEM WELL, I DON'T MEAN TO ENHANCE THEIR SENTENCES --

13 **THE COURT:** WISH THE GOVERNMENT WELL OR THE
14 DEFENDANTS WELL?

15 **MR. GASNER:** THE OTHER DEFENDANTS.

16 **THE COURT:** THANK YOU.

17 **MR. GASNER:** AFTER ALL THIS, I HAVE SADLY --
18 INDIVIDUALLY I WISH THEM WELL, BUT NOT THEIR ROLE IN THIS
19 CASE.

20 **THE COURT:** RIGHT.

21 **MR. GASNER:** WE ARE HEADED TO A PLACE WHERE THERE
22 WILL BE VERY LENIENT RECOMMENDATIONS FROM THE GOVERNMENT. I
23 MEAN, IT'S -- WE HAVE ALL SEEN THIS BEFORE.

24 AND WHEN THE SMOKE CLEARS AFTER MR. LIEW'S SENTENCING, AT
25 SOME TIME LATER THERE WILL BE CLAIMS OF COOPERATION AND BAD

1 HEALTH, AND WE ARE HEADED FOR A VERY DISPARATE SENTENCING
2 MATRIX.

3 AND I THINK THE WAY FOR THE COURT TO SOLVE THAT PROBLEM,
4 THOSE DEFENDANTS AREN'T HERE, BUT I THINK WE ALL KNOW WHERE
5 THIS IS HEADED IS TO MODERATE THE SENTENCE MR. LIEW RECEIVES
6 FOR ANY NUMBER OF THE REASONS WE HAVE SET FORTH IN OUR BRIEFS.

7 I THINK THE ONLY WAY TO GET TO ZERO OR NEAR ZERO WITH
8 THESE OTHER DEFENDANTS, WOULD BE TO SENTENCE MR. LIEW TO UNDER
9 TEN YEARS. IT'S NOT WHAT THE GUIDELINES SAY IN THIS DIFFICULT
10 2B1.1 WORLD, BUT THANKFULLY WE ARE NOT BOUND BY THAT. AND I
11 DO THINK THE COURT IS GOING TO PAINT ITSELF INTO A CORNER BY
12 LOWERING THE BOOM ON MR. LIEW AND THEN FACING THE OTHER
13 DEFENDANTS LATER.

14 SO THE COURT DID SIT THROUGH THE TRIAL. I HOPE THE COURT
15 HAS FOCUSED ON THE VAST SWATHS OF EVIDENCE THAT JUST DIDN'T
16 MAKE IT INTO THE TRIAL BECAUSE THERE WAS A VERY UNUSUAL
17 SITUATION THAT MOST OF THE OTHER PLAYERS WEREN'T HERE IN THE
18 UNITED STATES. AND WE'D SIMPLY ASK THE COURT TO FOCUS ON
19 MR. LIEW AS A HUMAN BEING.

20 THE COURT HAS SEEN THE PICTURES OF WHERE HE CAME FROM IN
21 MALAYSIA AND HOW FAR HE GOT IN THE WORLD. HE'S AN AMBITIOUS
22 MAN WHO MADE SOME HUGE MISTAKES IN TRYING TO GET INTO THE BIG
23 TIME. AND HE HAS ALREADY BEEN INCARCERATED UNDER PRETTY
24 GHASTLY CONDITIONS IN COUNTY JAIL. AND HE SUFFERED A LOT.
25 AND THE QUESTION FOR THE COURT IS HOW MUCH MORE DOES THE COURT

1 NEED TO PUNISH HIM.

2 THIS IS A TIME WHERE WE ARE LETTING PEOPLE OUT OF PRISON
3 RIGHT AND LEFT BECAUSE OF OVERCROWDING. IT'S A STRAPPED
4 FINANCIAL TIME. THE DEPARTMENT OF JUSTICE ITSELF IS TRYING TO
5 FIGURE OUT HOW TO DEAL WITH OVERCROWDING IN PRISONS. A
6 SENTENCE OF UNDER TEN YEARS, WE SUBMIT, YOUR HONOR, IS GOING
7 TO SEND A GIANT MESSAGE TO THE WORLD, AND THAT IT'S OVERKILL
8 BEYOND THAT.

9 **THE COURT:** ALL RIGHT. THANK YOU.

10 MR. LIEW, THIS IS YOUR -- LET ME ASK YOU QUESTION,
11 MR. GASNER. I THINK I KNOW THE ANSWER.

12 WILL MR. LIEW BE SPEAKING ON HIS OWN BEHALF AND THAT OF
13 USAPTI?

14 **MR. GASNER:** YES.

15 **THE COURT:** VERY WELL. MR. LIEW, ANYTHING YOU WOULD
16 LIKE TO SAY TO THE COURT? PLEASE SPEAK INTO THE MICROPHONE IF
17 YOU WILL, SIR.

18 **THE DEFENDANT:** YES, YOUR HONOR. THANK YOU FOR
19 GIVING ME THIS OPPORTUNITY TO SPEAK.

20 FIRST I WOULD LIKE TO THANK YOU FOR GRANTING MY RELEASE ON
21 BAIL BACK IN JANUARY. AND THIS ALLOWED ME TO SPEND SOME TIME
22 AT HOME WITH MY FAMILY, ESPECIALLY MY SON. IT MEANT A LOT TO
23 US. THIS IS A BELATED THANK YOU, BUT I WANT TO SAY TO YOU I'M
24 REALLY THANKFUL FOR IT.

25 IN REGARDS TO MY CONVICTIONS, YOUR HONOR, I BELIEVE IN OUR

1 SYSTEM AND I RESPECT OUR SYSTEM, AND BECAUSE OF THAT, I ACCEPT
2 THE JURY'S VERDICT EVEN THOUGH I DISAGREE WITH IT.

3 THERE ARE MANY THINGS I WISH I WOULD HAVE DONE VERY
4 DIFFERENTLY, YOUR HONOR, AND I FEEL TERRIBLE ABOUT IT, AND I
5 REGRET MY ACTIONS.

6 I WISH TO APOLOGIZE TO ANYONE WHO MAY HAVE BEEN AFFECTED
7 BY MY ACTIONS. I KNOW, YOUR HONOR, MY EMPLOYEES ARE ALL AT
8 WORK, AND SOME OF THEM HAVE YOUNG FAMILY, VERY YOUNG CHILDREN,
9 AND SOME OF THEIR LIFE MAY HAVE CHANGED, AND I'M VERY SORRY
10 FOR IT.

11 MY LIFE HAS ALSO CHANGED SINCE 2011. YOUR HONOR, I HAVE
12 BEEN INCARCERATION FOR THE PAST THREE YEARS, AND IT HAS BEEN A
13 JOURNEY AND LEARNING EXPERIENCE TO ME. INSIDE THE JAIL, I
14 LEARNED TO APPRECIATE LIFE AND EVEN SMALL THINGS. I ALSO
15 LEARNED THAT WE CAN LIVE VERY SIMPLE AND WE DON'T NEED A LOT
16 OF MONEY.

17 I HAVE SPENT CONSIDERABLE TIME AT DUBLIN DETENTION CENTER,
18 AND I WORK THERE AS A FOOD SERVICE IN THE KITCHEN AND ALSO
19 LAUNDRY. I WAS ALSO THE UNPAID LIBRARIAN. WHEN PEOPLE THERE
20 GET TO KNOW ME MORE PERSONALLY, AND I WAS ABLE TO HELP SOME
21 INMATES TO PREPARE THEIR GED'S. AND I WAS ALSO ALLOWED TO
22 TEACH ALGEBRA TO AN OFFICER, MR. WHEELER WHO WAS WORKING ON
23 HIS COLLEGE DEGREE, AND I WAS ABLE TO HELP HIM TO PASS ALGEBRA
24 WITH A GOOD GRADE.

25 LOOKING FORWARD, YOUR HONOR, MY PLANS FOR FUTURE ARE

1 MAINLY TWO. ONE, TO BE WITH MY FAMILY AND, TWO, TO GET BACK
2 TO SOCIETY.

3 DURING MY EXPERIENCE OF TUTORING AND HELPING PEOPLE IN
4 JAIL, I REALIZE I CAN BE USEFUL AGAIN. AND I PLAN TO CONTINUE
5 TO OFFER MYSELF AND SERVICE TO OUR SOCIETY.

6 MY SECOND PLAN IS TO SPEND MY LIFE WITH MY FAMILY. THE
7 MOST PRECIOUS THINGS IN LIFE TO ME IS MY FAMILY. YOUR HONOR,
8 I HAVE A SON WHO IS STILL VERY YOUNG. SEEING HIM GROWING UP
9 WITHOUT ME IS THE HARDEST THING TO ME. AND WITH THAT, YOUR
10 HONOR, I'M ASKING FOR YOUR LENIENCY.

11 AND I THANK YOU.

12 **THE COURT:** THANK YOU, SIR.

13 MR. HEMANN, MR. AXELROD, DO YOU WANT TO SAY ANYTHING
14 BRIEFLY IN RESPONSE TO THE DEFENSE PRESENTATION?

15 **MR. HEMANN:** YES, YOUR HONOR.

16 I GUESS I'D FIRST LIKE TO SAY THAT THE STATEMENTS THAT
17 MR. LIEW JUST MADE WERE, I THINK, THE FIRST TIME THAT WE HAVE
18 HEARD ANY HUMILITY FROM THAT SIDE OF THE COURTROOM. AND I
19 BELIEVE IT WAS HEARTFELT. I BELIEVE IT WAS LEGITIMATE. BUT
20 IT WAS THE FIRST TIME. AND I THINK THAT IT IS COMMENDABLE
21 THAT HE DID IT AND COMMENDABLE THAT HE SAID IT. BUT OF
22 EVERYTHING THAT HAS BEEN SAID AT SENTENCING, THAT'S IT.

23 WHAT WE HAVE HEARD FROM THE DEFENSE THROUGHOUT THIS CASE,
24 INCLUDING TODAY, HAS BEEN A BUNCH OF DISPARATE THEORIES THAT
25 ARE DESIGNED TO NIBBLE AROUND THE EDGES, BUT COMPLETELY IGNORE

1 THE CENTRAL FACTUAL NARRATIVE IN THE CASE THAT WAS PROVEN BY
2 THE EVIDENCE AND FOUND BY THE JURY, WHICH WAS THAT MR. LIEW
3 WAS ASKED IN 1991 BY CHINESE GOVERNMENT OFFICIALS TO LOOK FOR
4 KEY TECHNOLOGIES. HE DID THAT. HE STAYED IN TOUCH WITH THESE
5 CHINESE OFFICIALS THROUGHOUT THIS PERIOD OF TIME INTO THE LATE
6 EARLY 2000'S.

7 HE WAS WORKING FOR PEOPLE WHO WERE PROVIDING HIM MONEY
8 FROM CHINA THROUGHOUT THIS PERIOD OF TIME, THE WHOLE QIAO NING
9 BROTHER-IN-LAW STORY THAT WE HAVE HEARD A LITTLE BIT AT TRIAL
10 AND THROUGHOUT SENTENCING, SUGGEST THAT SOMEBODY WAS SENDING
11 HIM \$200,000 A YEAR THROUGHOUT THE TIME THAT HE WAS BUILDING
12 HIS BUSINESS. AND THESE PEOPLE -- THERE'S NO EVIDENCE THAT
13 THESE PEOPLE WHO WERE SENDING HIM IN THE MONEY HAD ANY MONEY.

14 MONEY IS COMING FROM SOMEWHERE THROUGHOUT THIS PERIOD OF
15 TIME, YOUR HONOR. AND IT'S COMING FROM THE PEOPLE WHO
16 INITIALLY ASKED MR. LIEW TO START LOOKING FOR TECHNOLOGY. HE
17 FINDS TECHNOLOGY AND HE FINDS IT IN THE PEOPLE OF MR. MAEGERLE
18 AND MR. SPITLER.

19 AND THE DEFENSE SAYS HE DOESN'T USE THE TECHNOLOGY. AND
20 THAT, YOUR HONOR, IS THE MOST -- I WANT TO SAY INSULTING, AND
21 I THINK IT IS, IT IS THE MOST INSULTING THING THAT HAS BEEN
22 SUGGESTED BECAUSE WHAT -- FOR YEARS THE CHINESE ARE LOOKING TO
23 DEVELOP THIS EXTREMELY VALUABLE TECHNOLOGY. AND TO PUT A
24 FACTORY IN CHINA, THEY TALKED TO DU PONT ABOUT DOING THIS, AND
25 DU PONT REFUSES TO DO IT. AND AS MR. LIEW SAID, FOR THE

1 OBVIOUS REASONS. AND THE OBVIOUS REASON IS THAT THEY DON'T
2 WANT TO HAVE THEIR TECHNOLOGY STOLEN. THEY REFUSE TO DO IT.

3 SO OF ALL OF THE HUMAN BEINGS IN THE ENTIRE WORLD TO HAVE
4 ACCESS TO ALL OF THESE PATENTS AND ALL OF THIS RESEARCH, THE
5 PANGANG GROUP FINDS WALTER LIEW, WHO IS ENTIRELY UNQUALIFIED
6 TO DO THIS EXCEPT FOR ONE THING. HE HAS INFORMATION FROM DU
7 PONT ABOUT HOW TO BUILD A DU PONT FACTORY.

8 AND YOUR HONOR WILL REMEMBER THE DOCUMENT FROM THE PANGANG
9 GROUP THAT DESCRIBES HOW MR. LIEW IN 2008 WENT THERE AND
10 UNROLLED THE DU PONT PLAN. THAT'S WHY HE GOT THESE BECAUSE HE
11 HAD THE DU PONT INFORMATION.

12 WHAT WAS THE VALUE OF THAT INFORMATION? THE VALUE OF THAT
13 INFORMATION, ACCORDING TO THE MARKET, WAS \$28 MILLION. THEY
14 PAID MR. LIEW \$28 MILLION. HE SPENT ABOUT SIX ON EXPENSES,
15 AND WHAT'S THE OTHER \$20 MILLION FOR? IT'S BECAUSE HE HAD
16 SOMETHING. HE HAD SOMETHING THAT NOBODY ELSE HAD OR NOBODY
17 ELSE HAD THAT WAS WILLING TO GIVE IT.

18 THAT'S WHAT THIS CASE IS ABOUT. HE WAS ASKED TO DO
19 SOMETHING BY CHINESE GOVERNMENT OFFICIALS, HE DID IT, AND HE
20 MADE \$20 MILLION OFF OF THAT. THAT'S WHAT THIS CASE IS ABOUT.
21 THAT'S WHAT THE FACTS PROVED. THAT'S WHAT THE JURY FOUND, AND
22 THAT'S HOW MR. LIEW SHOULD BE SENTENCED.

23 AND THAT'S WHY THIS -- THIS VALUE FIGURE, THIS 22-LEVEL
24 ENHANCEMENT IS TOTALLY APPROPRIATE. WE ARE NOT USING
25 SPECULATIVE GAIN, WE ARE USING THE PROFIT, THE VALUE OF THE

1 INFORMATION THAT MR. LIEW BROUGHT TO THE TABLE.

2 OF COURSE, OF COURSE THIS IS TRAGIC. IT'S ALWAYS TRAGIC.

3 IT'S TRAGIC EVERY SINGLE TIME FOR 15 YEARS THAT I'VE STOOD

4 THERE AND YOU SAT THERE, THIS HAS BEEN TRAGIC.

5 HE HAS A KID WHO IS NOT AT FAULT AT ALL, WHO'S GOING TO

6 SUFFER PROBABLY MORE THAN ANYBODY INVOLVED IN THIS. BUT

7 THAT'S EVERY SINGLE CASE. AND THAT ALONE IS NOT ENOUGH TO

8 DROP DOWN OUT OF THE GUIDELINES, PARTICULARLY WHEN THE COURT

9 LOOKS AT 3553(A), WHICH SAYS THAT THE PURPOSE OF THE SENTENCE

10 IS TO PROMOTE RESPECT FOR THE LAW, TO PUNISH, AND TO CREATE

11 DETERRENCE. AND THOSE FACTORS WEIGH STRONGLY IN FAVOR OF

12 STAYING WITHIN THE GUIDELINES IN THIS CASE.

13 **THE COURT:** I WOULD LIKE YOU TO COMMENT ON THE POINT
14 MR. GASNER MADE ON THIS ISSUE OF THE REQUIREMENT THAT 3553 --
15 THAT THE COURT AVOID UNWANTED DISPARITIES.

16 I'M NOT SO MUCH INTERESTED -- I'VE READ EVERYTHING THAT
17 EVERYBODY SAID AND I HAVE ENOUGH INFORMATION ON REPORTED OTHER
18 CASES THAT MIGHT BE APPROPRIATE TO COMPARE, BUT I'M INTERESTED
19 BECAUSE THIS IS SOMETHING UNIQUELY WITHIN THE KNOWLEDGE AND
20 AUTHORITY OF THE EXECUTIVE BRANCH OF WHAT IS COMING DOWN
21 THE -- OBVIOUSLY THE COURT GOING TO MAKE THE FINAL DECISION,
22 AND THE COURT WILL BE DRIVEN BY THE TOTALITY OF THE FACTORS
23 THAT I HAVE IN THIS CASE, BUT WHAT IS YOUR RESPONSE TO THAT
24 IDEA THAT, WELL, IF YOU GIVE MR. LIEW THE SENTENCE ANYWHERE
25 NEAR WHAT PROBATION IS TALKING ABOUT, OR THE GOVERNMENT, OR

1 THE GUIDELINES, THEN AREN'T YOU IMMEDIATELY SETTING UP
2 EITHER -- SOME SORT OF UNWANTED DISPARITY PARADIGM WITH THE
3 OTHER DEFENDANTS.

4 **MR. HEMANN:** I WAS GOING TO ADDRESS THAT AND I'M
5 HAPPY --

6 **THE COURT:** DO IT NOW. THANK YOU.

7 **MR. HEMANN:** I THINK THE QUESTION IS -- THE QUESTIONS
8 ARE TWO.

9 FIRST OF ALL, WILL THERE BE DISPARITIES? I WOULD ASSUME
10 THERE WILL BE SOME DISPARITIES. THE MAGNITUDE OF THOSE
11 DISPARITIES HAS YET TO BE DECIDED AND WE HAVE NOT MADE --
12 THERE IS NOT A FINAL PRESENTENCE REPORT FOR THE OTHER
13 DEFENDANTS AND WE HAVEN'T GONE THROUGH THAT PROCESS. BUT I
14 THINK CANDIDLY, WE ANTICIPATE THERE WILL BE SOME DISPARITIES.

15 THE QUESTION OF THE GUIDELINES IS WHETHER THOSE
16 DISPARITIES ARE WARRANTED OR UNWARRANTED. WHAT I CAN
17 GUARANTEE, YOUR HONOR, IS THAT IN MAKING OUR SENTENCING
18 RECOMMENDATIONS AND OUR ARGUMENTS, WE ARE ONLY GOING TO ASK
19 FOR A WARRANTED DISPARITY.

20 AND WHEN I SAY "WARRANTED", WHAT I MEAN IS WARRANTED BY
21 THE LAW. AND THE LAW SPECIFICALLY CONTEMPLATES THAT LESS
22 CULPABLE DEFENDANTS RECEIVE LESS CULPABLE -- LOWER SENTENCES.

23 SO IF MR. MAEGERLE DOES NOT GET AN ORGANIZER OR LEADER
24 ENHANCEMENT, HIS SENTENCE IS GOING TO BE LOWER. HE RECEIVED
25 SOMETHING ON THE ORDER OF \$400,000, NOT \$20 MILLION. HIS

1 SENTENCE SHOULD BE LOWER FOR THAT REASON. HE'S 80 YEARS OLD
2 AND HEALTH PROBLEMS. THE GUIDELINES SAY YOU ARE SUPPOSED TO
3 CONSIDER THAT. HIS SENTENCE IS GOING TO BE LOWER FOR THAT
4 REASON.

5 SO THERE ARE REASONS THAT ARE WARRANTED. TZE CHAO
6 COOPERATED AND DIDN'T RECEIVE \$20 MILLION. THERE'S ALL OVER
7 THE SENTENCING LAW IS COOPERATION. AND IF YOU COOPERATE, YOU
8 GET A LOWER SENTENCE. THAT'S WHAT THE LAW SAYS. THAT'S A
9 WARRANTED DISPARITY, NOT AN UNWARRANTED DISPARITY.

10 SO WE WILL BE KEEN, YOUR HONOR, TO MAKE SURE THAT ANY
11 DISPARITY IN THE SENTENCE IS SUPPORTED BY THE GUIDELINES AND
12 BY THE 3553(A) FACTORS. AND AS THE COURT NOTED, THE COURT HAS
13 DISCRETION TO SENTENCE WHAT IT WANTS.

14 BUT AS MR. GASNER ALSO POINTED OUT, WHEN WE STAND HERE
15 TODAY, THERE ARE -- JUSTICE IS SUPPOSED TO BE INDIVIDUAL.
16 AND, YES, THERE SHOULD BE -- THERE SHOULD NOT BE UNWARRANTED
17 DISPARITIES. AND I THINK YOUR HONOR POINTED OUT, THERE IS A
18 LITTLE -- I DON'T KNOW IF IT'S AMBIGUITY, THERE ARE OTHER
19 CASES -- THERE SHOULD NOT BE DISPARITIES. I THINK WHAT
20 CONGRESS WAS DRIVING AT HERE WAS, A DEFENDANT IN OAKLAND
21 SHOULDN'T GET, YOU KNOW, TWO MONTHS FOR, YOU KNOW, POSSESSION
22 OF X AMOUNT OF COCAINE WHILE A DEFENDANT IN OKLAHOMA CITY GETS
23 20 YEARS FOR POSSESSION OF THAT AMOUNT OF COCAINE. I THINK
24 THAT'S REALLY WHAT CONGRESS HAD IN MIND WHEN IT WROTE THE
25 STATUTE.

1 IT MIGHT APPLY IN A CASE WHERE YOU'VE GOT VARIOUS
 2 CO-CONSPIRATORS IN THE SAME ACTION, BUT I WOULD SUGGEST THAT
 3 THAT'S NOT WHAT CONGRESS HAD IN MIND BECAUSE THE COURT, YOUR
 4 HONOR, IS ABLE TO DETERMINE WHAT SENTENCE IS WARRANTED UNDER
 5 THE GUIDELINES FOR EACH ONE OF THOSE DEFENDANTS.

6 SO, MY RESPONSE WOULD BE, THERE WILL BE DISPARITIES. MY
 7 FURTHER RESPONSE IS, THOSE, DISPARITIES ARE WARRANTED BY THE
 8 WAY EACH OF THE DEFENDANTS WILL BE TREATED UNDER THE
 9 SENTENCING GUIDELINES. AND THERE'S ALWAYS SITUATIONS IN A
 10 CONSPIRACY WHEN NOT ALL THE DEFENDANTS GET THE SAME SENTENCE.

11 **MR. AXELROD:** YOUR HONOR, I WANT TO ADD ONE POINT TO
 12 THAT, WHICH IS, THE DISPARITY ALSO INVOLVES THE CONDUCT OF
 13 WHICH THE DEFENDANTS ARE CONVICTED.

14 I THINK THAT HERE TODAY WE ARE ADDRESSING MR. LIEW. AND
 15 MR. LIEW'S CONDUCT, I THINK, OBVIOUSLY THE HEART OF THIS CASE
 16 HAS TO DO WITH THE THEFT OF THIS TECHNOLOGY AND THE SALE TO
 17 THE CHINESE. BUT HIS CONDUCT WAS BROADER THAN THAT BECAUSE HE
 18 CHEATED ON HIS TAXES FOR ALL THOSE YEARS. HE LIED TO THE
 19 BANKRUPTCY --

20 **THE COURT:** I KNOW ALL THAT.

21 **MR. AXELROD:** THOSE ARE NOT THINGS THAT ARE EXISTING
 22 IN THE CASE OF MR. CHAO OR --

23 **THE COURT:** I UNDERSTAND ALL THAT.

24 IS THERE ANYTHING FURTHER YOU WANT TO ADD TO YOUR PAPERS?

25 **MR. HEMANN:** NO, YOUR HONOR, OTHER THAN BY JUST

1 REPEATING THAT WE --

2 **THE COURT:** OTHER THAN REPEATING.

3 **MR. HEMANN:** I DON'T KNOW IF WE SAID THIS, SO LET ME
4 SAY THIS. WE DO ADVOCATE THAT THE COURT IMPOSE A GUIDELINE
5 SENTENCE IN THIS CASE.

6 **THE COURT:** DO YOU WANT TO SAY ANYTHING BRIEFLY IN
7 REBUTTAL THAT JUST WAS RAISED BY THEM THAT WAS NOT IN THE
8 PAPERS?

9 **MR. GASNER:** YES, YOUR HONOR.

10 THE HANDWRITING ON THE WALL IS EVEN MORE CLEAR. IT SEEMS
11 LIKE THE GOVERNMENT'S THEORY OF MR. MAEGERLE IS GOING TO BE
12 THAT \$400,000 IS THE GAIN THAT HE RECEIVED. AND THAT IS TEN
13 LEVELS LOWER THAN WHAT THE GUIDELINES WOULD HAVE FOR MR. LIEW.

14 WE ALSO KNOW THAT THE \$20 MILLION DID NOT GO TO MR. LIEW.
15 IT WENT TO --

16 **THE COURT:** IT WENT TO PEOPLE IN CHINA, MR. LIEW'S
17 FAMILY IN CHINA, RIGHT?

18 **MR. GASNER:** YES.

19 **THE COURT:** WE WILL NEVER GET IT. WE DON'T KNOW
20 WHERE IT IS BECAUSE IT HAS BEEN SPIRITED AWAY OUT OF THE
21 COUNTRY.

22 **MR. GASNER:** IT'S NEITHER THE FBI NOR THE DEFENSE WAS
23 ABLE TO GET ANY TRACTION IN GETTING ANY EVIDENCE --

24 **THE COURT:** IS THAT A GOOD FACT FOR YOU THEN?

25 **MR. GASNER:** WELL, IT IS A GOOD FACT FOR MR. LIEW AND

1 IT REBUTS --

2 **THE COURT:** WHY? IT SHOWS HE WAS SUCCESSFUL IN
3 COVERING THESE CRIMES UP.

4 **MR. GASNER:** IT IS NOT BENEFIT TO HIM PERSONALLY.

5 **THE COURT:** WE DON'T KNOW THAT, DO WE. THESE MONIES
6 ARE IN CHINA AND THERE ARE RELATIVES IN CHINA, AND MONEY WAS
7 COMING IN FROM OVERSEAS. WE HAVE NO IDEA OF THAT. I DON'T
8 KNOW IF THAT IS A GOOD FACT FOR MR. LIEW THAT THIS MONEY, SOME
9 OF WHICH IS PERHAPS OWED TO OTHERS, IS SOMEWHERE IN A PLACE
10 WHERE IT CAN NEVER BE RECOVERED BY ANYBODY OTHER THAN PERHAPS
11 SOMEBODY WITH CONNECTIONS TO THE PEOPLE'S REPUBLIC OF CHINA,
12 RIGHT?

13 **MR. GASNER:** AND YOUR HONOR WILL HAVE THE OPPORTUNITY
14 WITH OTHER DEFENDANTS TO ADDRESS THAT. I JUST DON'T THINK
15 IT'S FAIR TO SAY -- I MEAN, FROM WHAT WE KNOW, IT IS -- IT IS
16 NOT TO MR. LIEW PERSONALLY.

17 AND THE HANDWRITING IS ON THE WALL THAT -- THAT
18 MR. MAEGERLE, WHO IS THE PERSON WITH 30 YEARS AT DU PONT, AND
19 IF THIS IS A CASE ABOUT INTELLECTUAL PROPERTY AND HARM TO DU
20 PONT, I THINK THAT THE DU PONT LETTER MAKES CLEAR THAT FROM
21 THE VICTIM'S POINT OF VIEW, THEY CARE ABOUT MR. MAEGERLE AND
22 TZE CHAO AND MR. SPITLER, WHO IS BEYOND THEIR REACH NOW.

23 BUT IF WE ARE LOOKING AT THE SERIOUSNESS OF THE OFFENSE, I
24 THINK THE COURT IS GOING TO BE IN A CONUNDRUM WITH A REALLY
25 HIGH SENTENCE TO MR. LIEW. AND THE COURT'S FORFEITURE ORDER

1 IS GOING TO DEAL WITH TRACING THE MONEY, AND THE CIVIL PEOPLE
 2 WILL DO THEIR JOB. THE TAX LOSS TO THE UNITED STATES HAS BEEN
 3 FACTORED IN. YES, MR. LIEW WAS CONVICTED OF TAX OFFENSES.
 4 THAT ENDS UP IN THE KIND OF FIVE- TO SIX-YEAR RANGE.

5 **THE COURT:** ALL RIGHT. I UNDERSTAND ALL THAT. THE
 6 MATTER IS SUBMITTED. I'M GOING TO TAKE A 45-MINUTE BREAK. I
 7 WANT TO RESEARCH THE POINT WITH RESPECT TO THE FORFEITURE AND
 8 I ALSO WANT TO CONSIDER A PURPOSELY BUILT-IN BREAK HERE
 9 BECAUSE I WANT TO CONSIDER THE DISCUSSION THAT COUNSEL AND
 10 MR. LIEW MADE WITH THE COURT.

11 **MR. HEMANN:** MAY I MAKE ONE VERY BRIEF POINT, YOUR
 12 HONOR?

13 **THE COURT:** YES.

14 **MR. HEMANN:** JUST TO BE CLEAR, THE GOVERNMENT'S
 15 POSITION WITH RESPECT TO LOSS, THE LOSS CALCULATION WITH
 16 MR. MAEGERLE, WILL BE EXACTLY THE SAME AS IT IS. IF I HAD A
 17 WALL AND A MARKER, I WOULD WRITE ON IT FOR THE COURT.

18 IT'S GOING TO BE A 22-LEVEL INCREASE BECAUSE MR. MAEGERLE
 19 WAS CONVICTED OF BEING PART OF THE CONSPIRACY. THAT'S THE
 20 LOSS. THAT'S OUR POSITION.

21 **THE COURT:** I'M NOT GOING TO -- HIS LAWYER IS NOT
 22 HERE AND HE'S NOT HERE, SO I APPRECIATE THAT STATEMENT.

23 WE WILL TAKE A 45-MINUTE BREAK.

24 (RECESS TAKEN AT 12:03 P.M.; RESUMED AT 12:55 P.M.)

25 **THE COURT:** EVERYBODY MAY BE SEATED.

1 MR. LIEW AND COUNSEL AND THE GOVERNMENT COUNSEL, COME
2 FORWARD, PLEASE.

3 SO, I WOULD LIKE TO TURN NOW TO -- HAVING DETERMINED THE
4 ADJUSTED OFFENSE GUIDELINE CALCULATION, I'M GOING TO TURN TO
5 THE 3553(A) FACTORS. AND BEFORE I START WITH THOSE, I WANT TO
6 SAY A COUPLE OF THINGS.

7 BASED UPON THE PRESENTATION OF COUNSEL, BOTH IN THEIR
8 PAPERS AND TODAY, AND PARTICULARLY THE DEFENSE PRESENTATION,
9 BECAUSE THE PARTIES' COUNSEL KNOW THAT THE COURT SAT THROUGH
10 THIS TRIAL AND PRESIDED OVER THIS TRIAL FOR MANY, MANY WEEKS,
11 PRESIDED OVER PRETRIAL AND ALL THE MOTIONS AND EVIDENTIARY
12 MATTERS PRESENTED THERE, PLUS REVIEWED ALL OF THE NEW FACTS
13 THAT THE PARTIES HAVE BROUGHT BEFORE THE COURT FOR THE
14 SENTENCING, AND SO IT'S NOT JUST ABOUT THE BEAR VERDICT THAT
15 THE JURY ISSUED.

16 IT'S ABOUT THE WAY THE CASE WAS PRESENTED ON BOTH SIDES,
17 THE FACTS THAT WERE PRESENTED, THE EXHIBITS, THE EVIDENCE, THE
18 WITNESSES, THE ARGUMENT OF COUNSEL, THE THEORIES AND THE
19 THEMES OF COUNSEL, AND THE ARGUMENTS THAT I HAVE BEEN HEARING
20 IN THIS CASE FROM DEFENSE SIDE UP UNTIL THIS MOMENT, IN THE
21 COURT'S VIEW WERE THOROUGHLY, CATEGORICALLY, AND UNEQUIVOCALLY
22 REJECTED BY THE JURY. AND THE COURT, HAVING SAT THROUGH THE
23 TRIAL, WILL RELY ON WHAT IT HEARD DURING THE TRIAL, WHAT THE
24 JURY NECESSARILY FOUND, AND ALL OF THE EVIDENCE IT PRESENTED
25 BY THE PARTIES IN THE CASE.

1 SO THE FIRST THING I WANT -- AND THE OTHER THING I WANT TO
2 SAY IS THAT DEFENSE COUNSEL, IN HIS PRESENTATION TODAY,
3 FOCUSED ON THE ISSUE OF LOSS TO DU PONT, AND BASICALLY ARGUED
4 THAT THERE'S LITTLE OR NO LOSS THAT HAS BEEN PROVEN TO HAVE
5 BEFALLEN DU PONT.

6 I WOULD SUGGEST THAT BASED UPON THE VICTIM IMPACT LETTER
7 BY DU PONT AS WELL AS THE TESTIMONY OF THE WITNESSES, THE DU
8 PONT WITNESSES AT TRIAL, THAT THE LOSS THAT DU PONT INCURRED
9 OR SUFFERED COULD BE QUANTITATIVELY AND PARTICULARLY
10 QUALITATIVELY SUBSTANTIALLY GREATER THAN WHAT THE COURT IS
11 RELYING UPON IN THE GUIDELINE CALCULATION. AND IT IS QUITE
12 CLEAR TO THE COURT THAT THE DAMAGE TO DU PONT WAS AT LEAST
13 QUALITATIVELY GREATER THAN WHAT IS BEING URGED ON THE COURT
14 TODAY.

15 AND SO I WANT TO TALK FURTHER ABOUT THE NATURE AND
16 CIRCUMSTANCES OF THE OFFENSES FOR WHICH THE DEFENDANT WAS
17 CONVICTED.

18 THE JURY CONVICTED MR. LIEW AND USAPTI WITH VIOLATIONS OF
19 THE ECONOMIC ESPIONAGE ACT, ALSO CALLED THE EEA. NOW, THE
20 LEGISLATIVE HISTORY OF THE EEA NOTES THAT QUOTE, "THE
21 DEVELOPMENT OF PROPRIETARY ECONOMIC INFORMATION IS AN INTEGRAL
22 PART OF AMERICA'S ECONOMIC WELL-BEING. MOREOVER, THE NATION'S
23 ECONOMIC INTERESTS ARE A PART OF ITS NATIONAL SECURITY
24 INTERESTS, THUS THREATS TO THE NATION'S ECONOMIC INTEREST REST
25 WITH THE NATION'S VITAL SECURITY INTEREST", UNQUOTE, CITING

1 HOUSE REPORT 104-788 AT 4023.

2 IN ADDITION, THE LEGISLATIVE HISTORY PROVIDES THAT WHEN IT
3 COMES TO TRADE SECRETS, QUOTE, "THE VALUE OF THE INFORMATION
4 IS ALMOST ENTIRELY DEPENDENT ON IT BEING CLOSELY HELD. FOR
5 MANY COMPANIES, THIS INFORMATION IS THE KEYSTONE TO THEIR
6 ECONOMIC COMPETITIVENESS. THEY SPEND MILLIONS OF DOLLARS
7 DEVELOPING THE INFORMATION, TAKE GREAT PAINS AND INVEST IN
8 LARGE RESOURCES TO KEEP IT SECRET, AND EXPECT TO REAP REWARDS
9 FROM THEIR INVESTMENT", UNQUOTE, FROM THE SAME CITATION.

10 CONGRESS ALSO ENACTED THE EEA IN THE FACE OF, QUOTE,
11 "CONSIDERABLE EVIDENCE THAT FOREIGN GOVERNMENTS ARE USING
12 THEIR ESPIONAGE CAPABILITIES AGAINST AMERICAN COMPANIES",
13 UNQUOTE, AND NOTED THAT THE USE OF QUOTE "ECONOMIC OR
14 INDUSTRIAL ESPIONAGE", UNQUOTE, WAS AN APT DESCRIPTION OF THE
15 CONDUCT THE EEA WAS INTENDED TO PROHIBIT.

16 QUOTE, "ESPIONAGE IS TYPICALLY AN ORGANIZED EFFORT BY ONE
17 COUNTRY'S GOVERNMENT TO OBTAIN THE VITAL NATIONAL SECURITY
18 SECRETS OF ANOTHER COUNTRY. TYPICALLY ESPIONAGE HAS FOCUSED
19 ON MILITARY SECRETS, BUT AS THE COLD WAR HAS DRAWN TO A CLOSE,
20 THIS CLASSIC FORM OF ESPIONAGE HAS EVOLVED. ECONOMIC
21 SUPERIORITY IS INCREASINGLY AS IMPORTANT AS MILITARY
22 SUPERIORITY, AND THE ESPIONAGE INDUSTRY IS BEING RETOOLED WITH
23 THIS IN MIND", UNQUOTE. I'M CITING FROM THE SAME HOUSE REPORT
24 AT PAGES 4023 THROUGH 4024.

25 THE LEGISLATIVE HISTORY ALSO CITES TO A REPORT FROM THE

1 FBI ABOUT ECONOMIC ESPIONAGE ACTIVITIES AIMED AT THE UNITED
2 STATES, SOME BY IDEOLOGICAL AND MILITARY ADVERSARIES AND THEY
3 TARGET U.S. ECONOMIC AND TECHNOLOGICAL INFORMATION AS AN
4 EXTENSION OF A CONCERTED INTELLIGENCE ASSAULT ON THE UNITED
5 STATES CONDUCTED THROUGHOUT THE COLD WAR.

6 IN ADDITION, THE SENTENCING COMMISSION RECENTLY AMENDED
7 SECTION 2B1.1 TO PROVIDE FOR A FOUR-LEVEL ENHANCEMENT IF A
8 DEFENDANT KNEW OR INTENDED THAT THE OFFENSE WOULD BENEFIT A
9 FOREIGN ENTITY. IT ALSO DETERMINED THAT A MINIMUM OFFENSE
10 LEVEL OF 14 SHOULD APPLY TO SUCH OFFENSES.

11 SEE, FOR EXAMPLE, U.S. SENTENCING GUIDELINES SECTION
12 2B1.1(B) (13) (B), WHICH IS THE 2013 VERSION OF THE GUIDELINES.

13 THE SENTENCING COMMISSION ALSO INCLUDED A TWO-LEVEL
14 ENHANCEMENT IF THE DEFENDANT KNEW OR INTENDED THAT THE TRADE
15 SECRET WOULD BE TRANSPORTED OUT OF THE UNITED STATES. I AM
16 CITING TO THE GUIDELINES AT 2B1.1(B) (13) (A), AGAIN, THE 2013
17 VERSION.

18 ALTHOUGH THE COURT CANNOT AND DID NOT APPLY THESE
19 ENHANCEMENTS BECAUSE OF EX POST FACTO ISSUES, THAT DOES NOT
20 PRECLUDE THE FACT FROM CONSIDERING THEM IN THE 5335(A)
21 ANALYSIS. IN PEUGH, P-E-U-G-H, VERSUS UNITED STATES, THE
22 SUPREME COURT MADE CLEAR A SENTENCING COURT MAY QUOTE, "MAY
23 GIVE CAREFUL CONSIDERATION TO THE CURRENT VERSION OF THE
24 GUIDELINES AS REPRESENTING THE MOST RECENT VIEWS OF THE AGENCY
25 CHARGED BY CONGRESS WITH DEVELOPING SENTENCING POLICY",

1 UNQUOTE, AND MAY CONSIDER NEWER GUIDELINES AS A REASON TO
2 DEVIATE FROM THE OLDER GUIDELINES. AND THAT'S PEUGH V. UNITED
3 STATES, AT 133 SUPREME COURT 2072 AND 2087 DECIDED IN 2014.

4 THE JURY ALSO CONVICTED MR. LIEW OF OBSTRUCTION OF
5 JUSTICE, WITNESS TAMPERING IN CIVIL LITIGATION, HIDING
6 EVIDENCE, AND TRYING TO -- WHICH, SPECIFICALLY, THE SAFETY
7 DEPOSIT BOX. THEY ALSO CONVICTED HIM OF DEFRAUDING THE
8 BANKRUPTCY COURT AND ITS TRUSTEE, HARMING CREDITORS AND
9 EMPLOYEES WAS IMPLICIT IN THAT. THEY CONVICTED HIM OF TAX
10 EVASION. AND THE TAX EVASION AND THE BANKRUPTCY CHARGES BOTH
11 RELY ON THE HONOR SYSTEM IN ORDER TO FUNCTION IN THIS COUNTRY.

12 IN SUM, IN THE COURT'S VIEW, MR. LIEW'S ACTIONS
13 REPRESENTED A VIRTUAL WHITE COLOR CRIME SPREE, NOT ONLY AS TO
14 SUBSTANTIVE OFFENSES, BUT ALSO ATTEMPTS TO HIDE AND DESTROY
15 EVIDENCE, INFLUENCE WITNESSES, LIE ABOUT HIS RELATIONSHIP TO
16 THE CHINESE GOVERNMENT, AND HARM OUR ECONOMY.

17 I WANT TO TALK ABOUT THE HISTORY AND THE CHARACTERISTICS
18 OF THE DEFENDANT.

19 ON THE POSITIVE SIDE, MR. LIEW DID, IN FACT, LIFT HIMSELF
20 OUT OF POVERTY TO OBTAIN AN ADVANCED ENGINEERING DEGREE. HE
21 IS OBVIOUSLY RESPECTED IN HIS COMMUNITY AND IS A LOVING
22 FATHER. HE'S NEVER BEEN INVOLVED IN THE CRIMINAL JUSTICE
23 SYSTEM BEFORE THIS. AND, AGAIN, APART FROM THIS INCIDENT, HAS
24 SHOWN HIMSELF TO BE A LAW-ABIDING CITIZEN.

25 UNFORTUNATELY, AS THIS COURT HAS SEEN IN SO MANY CASES,

1 PURE GREED HAS BROUGHT MR. LIEW TO THIS POINT BEFORE THIS
2 COURT TODAY. UNLIKE SO MANY DEFENDANTS THAT THIS COURT SEES,
3 MR. LIEW COMES FROM A STRONG FAMILY AND COMMUNITY, AND DID NOT
4 FACE THE SAME TYPE OF TRAUMAS AND CHALLENGES THAT SO MANY
5 OFFENDERS THAT THIS COURT SENTENCES SEE.

6 I WANT TO ALSO TALK ABOUT THIS EPISODE WITH THE ALLEGED
7 JOINT VENTURE WITH THE DEFENDANT'S BROTHER-IN-LAW, AND NOW
8 THIS REPAYMENT, SO-CALLED REPAYMENT OF DEBTS BETWEEN AND THIS
9 WHOLE IDEA THAT MR. LIEW HAS PUT FORTH, BOTH ATTEMPTED TO PUT
10 FORTH IN THE TRIAL -- AT TRIAL AND HAS NOW PUT FORTH IN
11 CONNECTION WITH THE SENTENCING.

12 THIS WHOLE ISSUE, THIS WHOLE SET OF TRANSACTIONS INVOLVING
13 THIS JOINT VENTURE STRIKES THE COURT AS BEING COMPLETELY
14 CONTRIVED. THE COURT HAS REVIEWED THE BAIL PAPERS THAT THE
15 DEFENDANT SUBMITTED IN SUPPORT OF -- THAT THE COURT REVIEWED
16 EX PARTE IN CAMERA IN CONNECTION WITH HIS ATTEMPT TO HAVE THE
17 COURT RELEASE HIM ON PRETRIAL RELEASE. AND BECAUSE THOSE
18 DOCUMENTS ARE SEALED, I'M NOT GOING TO GET INTO THEM IN DETAIL
19 EXCEPT TO SAY THAT THESE TRANSACTIONS WERE NEVER MENTIONED IN
20 THE BAIL PAPERS OR -- AND HAVE NEVER BEEN SUPPORTED TO DATE BY
21 ANY AUTHENTIC OR CREDIBLE CORROBORATING DOCUMENTATION THAT ONE
22 WOULD EXPECT TO EXIST IF THIS TRANSACTION HAD REALLY BEEN
23 TRUE.

24 IN ADDITION, IN 2004, MR. LIEW CALLED HIMSELF A PATRIOTIC
25 OVERSEAS CHINESE, YET HE IS AN AMERICAN CITIZENS WHO WAS

1 OFFERED THE PRIVILEGE OF CITIZENSHIP IN THIS COUNTRY AND
2 TURNED AGAINST HIS ADOPTED COUNTRY FOR GREED.

3 MR. LIEW HAS NOT BEEN FORTHCOMING IN COURT, IN THE
4 PRESENTENCE REPORT, OR IN BAIL PAPERS ABOUT HIS FINAL -- HIS
5 FINANCIAL DEALINGS, INCLUDING THE JOINT VENTURES AND THE OTHER
6 MATTERS.

7 NOW, THE COURT HAS HEARD FROM MR. LIEW AS PART OF HIS
8 RIGHT TO ELOCUTE AND THE APOLOGY THAT HE'S MADE. AND THE
9 COURT FULLY TAKES INTO ACCOUNT THAT APOLOGY, BELIEVES THAT IT
10 IS HEARTFELT AND HE GENUINELY REGRETS HIS ACTIONS.

11 UNFORTUNATELY, THE POSITION THAT MR. LIEW HAS TAKEN,
12 VIS-A-VIS ACCEPTING THE JURY'S VERDICT, HE GETS THE CREDIT FOR
13 THAT, BUT THAT'S NOT WITHSTANDING THE PRESENTATION MADE BY HIS
14 DEFENSE TEAM WHICH SEEMS TO BE THAT IT'S ALL ABOUT NO LOSS,
15 THIS ALL -- THIS IS ALL SOME BIG MISTAKE OR SOME KIND OF
16 ATTEMPT BY DU PONT UNJUSTLY TO ENRICH ITSELF.

17 THE SENTENCE, CONTINUING WITH THE 3553(A) FACTORS, NEEDS
18 TO REFLECT -- THE COURT NEEDS TO CONSIDER THE NEED FOR THE
19 SENTENCE TO REFLECT THE SERIOUSNESS OF THE OFFENSE. I HAVE
20 ALREADY DISCUSSED WHAT CONGRESS AND THE SENTENCING COMMISSION
21 HAVE SAID ABOUT THESE CRIMES.

22 THE SENTENCE ALSO -- THE COURT MUST CONSIDER THE NEED FOR
23 THE SENTENCE TO PROMOTE RESPECT FOR THE LAW AND TO INSTILL
24 RESPECT FOR THE LAW, AND PROVIDE JUST PUNISHMENT FOR THE
25 OFFENSE. AS I SAID, THESE ARE VERY SERIOUS CRIMES. EXCEPT

1 FOR WHAT MR. LIEW SAID BEFORE IN HIS APOLOGY, I'M NOT SURE
2 THAT HE FULLY APPRECIATES THE MAGNITUDE OF WHAT HE DID IN HIS
3 WHITE COLOR CRIME SPREE.

4 I THINK ONE OF THE BIG FACTORS IS -- AND ONE OF THE
5 FACTORS THAT CONGRESS HAS SET FORTH IN 3553(A), IS TO AFFORD
6 ADEQUATE DETERRENCE TO CRIMINAL CONDUCT AND TO DETER OTHERS
7 WHO CONSPIRE WITH FOREIGN ENTITIES TO DO US HARM BY STEALING
8 OUR COMPANIES' TRADE SECRETS.

9 THE SENTENCE THAT THE COURT HANDS DOWN MUST SEND THE WORD
10 OUT TO ALL THOSE WHO MAY HAVE -- BE IN THE PROCESS OF OR
11 CONSIDER CONSORTING WITH THIS COUNTRY'S ENEMIES BY STEALING
12 THE SECRETS OF ITS COMPANIES. AND I THINK A LOUD MESSAGE HAS
13 TO GO FORTH FOR THAT.

14 SO, IN TERMS OF PROVIDING THE DEFENDANT WITH THE NEEDED
15 EDUCATIONAL OR VOCATIONAL TRAINING, WHICH 3553(A) REQUIRES THE
16 COURT TO CONSIDER, MEDICAL CARE OR OTHER CORRECTIONAL
17 TREATMENT, AND THAT IS NOT A SUBSTANTIAL FACTOR HERE WITH THE
18 POSSIBLE EXCEPTION OF PROVIDING FOR SOME TREATMENT FOR
19 SUBSTANCE ABUSE THAT IS ALLUDED TO IN THE PRESENTENCE REPORT.

20 THE 3553(A) ALSO IS INTERESTING IN THAT EVEN THOUGH BOOKER
21 SAYS THAT THE GUIDELINES ARE NOT MANDATORY, AND THEY ARE NOT,
22 3553(A), AS ONE OF THE FACTORS, FACTOR NUMBER 4, REQUIRES THE
23 COURT TO CONSIDER THE KINDS OF SENTENCE AND THE SENTENCING
24 RANGE ESTABLISHED FOR THE APPLICABLE CATEGORY OF OFFENSE
25 COMMITTED BY THE APPLICABLE CATEGORY OF DEFENDANT AS SET FORTH

1 IN THE GUIDELINES AND THE AMENDMENTS THERETO.

2 AND SO THE COURT HAS TAKEN INTO ACCOUNT THE FACTORS THAT
 3 ARE SET FORTH IN THE GUIDELINES AND AMENDMENTS THERETO,
 4 ESPECIALLY THE GUIDELINES THAT THE COURT HAS CITED.

5 WITH RESPECT TO THE POLICY STATEMENTS THAT 3553(A)
 6 MANDATES THE COURT TO CONSIDER, THE COURT HAS REVIEWED THOSE
 7 AND STATED THOSE ON THE RECORD.

8 THERE IS ONE -- THERE'S A FACTOR THAT BEARS A LITTLE BIT
 9 MORE DISCUSSION AT THIS POINT BECAUSE IT WAS BOTH PRESENTED AS
 10 A CONTENDED MATTER IN THE SENTENCING PRESENTATIONS AS WELL AS
 11 IN THE ORAL ARGUMENT TODAY, WHICH IS, SUBSECTION 6 OF 3553(A),
 12 WHICH IS THE NEED TO AVOID UNWANTED SENTENCE DISPARITIES AMONG
 13 DEFENDANTS WITH SIMILAR -- AMONG DEFENDANTS WITH SIMILAR
 14 RECORDS FOUND GUILTY OF SIMILAR CONDUCT.

15 THE COURT -- MR. LIEW HAS CITED A NUMBER OF CASES IN THIS
 16 AND OTHER COURTS IN -- HAVING TO DO WITH WHAT THEY ARGUE
 17 ARE -- WHAT HE ARGUES IS SIMILAR KINDS OF CASES. THE COURT
 18 DOES NOT FIND THESE CASES TO BE PERSUASIVE ON THIS ISSUE.
 19 THEY WERE EITHER -- REPRESENT GUILTY PLEAS, COOPERATING
 20 DEFENDANTS, OR OTHERWISE DISTINGUISHABLE.

21 FURTHER, MR. LIEW DOES NOT PRESENT THE COURT QUOTE, "WITH
 22 THE RECORDS IN THE CASES ON WHICH HE RELIES WHEN HE ARGUES
 23 THAT OTHER DEFENDANTS GOT OFF BETTER THAN HIM". I'M CITING
 24 THERE THE TREADWELL CASE, 593 F.3D AT 1012.

25 AND CONTINUING TO PARAPHRASE THE -- THE QUOTE, TREADWELL

1 INSERTING MR. LIEW'S NAME FOR THE NAME OF THE DEFENDANT IN
2 THAT CASE, THE NINTH CIRCUIT SAID, IT DOES NOT MATTER FOR THE
3 PURPOSES OF 3553(A) THAT MR. LIEW CAN POINT TO A SPECIFIC
4 CRIMINAL DEFENDANT WHO MAY HAVE RECEIVED A LIGHTER SENTENCE
5 FOR A DIFFERENT FRAUD. A DISTRICT COURT CONSIDERS THE
6 SECTION 3553(A) FACTORS TO TAILOR A SENTENCE TO THE SPECIFIC
7 CHARACTERISTICS OF THE OFFENSE AND THE DEFENDANT. IT HAS BEEN
8 UNIFORM AND CONSTANT IN THE FEDERAL JUDICIAL TRADITION FOR THE
9 SENTENCING JUDGE TO CONSIDER EVERY CONVICTED PERSON AS AN
10 INDIVIDUAL AND EVERY CASE AS A UNIQUE STUDY IN THE HUMAN
11 FAILINGS THAT SOMETIMES MITIGATE, SOMETIMES MAGNIFY THE CRIME
12 AND PUNISHMENT TO ENSUE.

13 THE MERE FACT THAT A DEFENDANT CAN POINT TO A DEFENDANT
14 CONVICTED AT A DIFFERENT TIME OF A DIFFERENT FRAUD AND
15 SENTENCED TO A TERM OF IMPRISONMENT SHORTER THAN HIS, DOES NOT
16 CREATE AN UNWANTED SENTENCING DISPARITY. MOREOVER, SENTENCING
17 DISPARITY IS ONLY ONE FACTOR A COURT CONSIDERS IN CRAFTING AN
18 INDIVIDUALIZED SENTENCE UNDER 3553(A).

19 A DISTRICT COURT NEED NOT, AND AS A PRACTICAL MATTER
20 CANNOT COMPARE A PROPOSED SENTENCE TO THE SENTENCE OF EVERY
21 CRIMINAL DEFENDANT WHO HAS EVER BEEN SENTENCED BEFORE. TOO
22 MANY FACTORS DICTATE THE EXERCISE OF SOUND SENTENCING DECISION
23 IN A PARTICULAR CASE TO MAKE THE INQUIRY MR. LIEW URGES
24 HELPFUL OR EVEN FEASIBLE.

25 THE -- AND, AGAIN, THE COURT IS CITING TREADWELL 593 F.3D

1 AT 1011 AND 1012, AND IT HAS OMITTED THE INTERNAL CITATIONS.

2 AS I MENTIONED THE COURT IS SUBSTITUTING MR. LIEW'S NAME FOR
3 MR. TREADWELL'S NAME IN THAT CASE.

4 THE COURT HAS CONSIDERED THE FOLLOWING FACTOR, WHICH IS
5 NUMBER 6 IN 3553(A), THE NEED TO PROVIDE RESTITUTION. AND THE
6 COURT IS MINDFUL OF THE FACT THAT SENTENCING MR. LIEW TO ANY
7 SIGNIFICANT JAIL TIME WILL IMPAIR HIS ABILITY TO MAKE
8 RESTITUTION, AND -- BUT FINDS THAT THE OTHER FACTORS THAT IT
9 HAS CITED PREVAIL.

10 SO, ACCORDINGLY, PURSUANT TO THE SENTENCING REFORM ACT OF
11 1984, IT IS THE JUDGMENT OF THE COURT THAT WALTER LIEW IS
12 HEREBY COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE
13 IN PRISON FOR A TERM OF 180 MONTHS.

14 THIS TERM CONSISTS OF 120 MONTHS ON COUNTS 1 THROUGH 3,
15 AND 5 THROUGH 9 TO RUN CONCURRENTLY WITH EACH OTHER, 60 MONTHS
16 ON COUNTS 10, 11, 13, 14, AND 20 THROUGH 22 TO RUN
17 CONCURRENTLY WITH ONE ANOTHER BUT CONSECUTIVELY TO COUNTS 1
18 THROUGH 3 AND COUNTS 5 THROUGH 9, 36 MONTHS ON COUNTS 15
19 THROUGH 19 TO RUN CONCURRENTLY WITH ALL OTHER COUNTS.

20 THE COURT RECOMMENDS THAT THE DEFENDANT PARTICIPATE IN THE
21 BUREAU OF PRISON'S RESIDENTIAL DRUG ABUSE TREATMENT PROGRAM.

22 UPON RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL BE
23 PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS. THIS
24 TERM CONSISTS OF THREE YEARS ON COUNTS 1 THROUGH 3, 5 THROUGH
25 14, AND 20 THROUGH 22, AND ONE YEAR ON COUNTS 15 THROUGH 19,

1 ALL COUNTS TO RUN CONCURRENTLY.

2 WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU
3 OF PRISONS, THE DEFENDANT SHALL REPORT TO THE PROBATION OFFICE
4 IN THE DISTRICT TO WHICH THE DEFENDANT IS RELEASED.

5 WHILE ON SUPERVISED RELEASE, THE DEFENDANT SHALL BE NOT
6 COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME, SHALL COMPLY
7 WITH THE STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THIS
8 COURT, EXCEPT THAT THE MANDATORY DRUG TESTING PROGRAM IS
9 SUSPENDED AND SHALL COMPLY WITH THE FOLLOWING ADDITIONAL
10 CONDITIONS:

11 ONE, THE DEFENDANT SHALL PARTICIPATE IN A PROGRAM OF
12 TESTING AND TREATMENT FOR ALCOHOL ABUSE AS DIRECTED BY THE
13 PROBATION OFFICER, UNTIL SUCH TIME AS THE DEFENDANT IS
14 RELEASED BY THE PROBATION OFFICER.

15 THE DEFENDANT IS TO PAY PART OR ALL OF THE COSTS OF THIS
16 TREATMENT AT AN AMOUNT NOT TO EXCEED THE COST OF TREATMENT AS
17 DEEMED APPROPRIATE BY THE PROBATION OFFICER. PAYMENT SHALL
18 NEVER EXCEED THE TOTAL COST OF URINALYSIS AND COUNSELING. THE
19 ACTUAL CO-PAYMENT SCHEDULE SHALL BE DETERMINED BY THE
20 PROBATION OFFICER.

21 TWO, THE DEFENDANT SHALL ABSTAIN FROM THE USE OF ALL
22 ALCOHOLIC BEVERAGES.

23 THREE, THE DEFENDANT SHALL PAY ANY RESTITUTION AND SPECIAL
24 ASSESSMENT THAT IS IMPOSED BY THIS JUDGMENT AND THAT REMAINS
25 UNPAID AT THE COMMENCEMENT OF THE TERM OF SUPERVISED RELEASE.

1 FOUR, THE DEFENDANT SHALL COMPLY AND COOPERATE WITH THE
2 INTERNAL REVENUE SERVICE IN A GOOD FAITH EFFORT TO PAY ANY
3 OUTSTANDING TAX LIABILITY TO INCLUDE ANY ASSESSED PENALTY AND
4 INTEREST.

5 FIVE, THE DEFENDANT SHALL TIMELY AND ACCURATELY FILE ALL
6 FUTURE INCOME TAX RETURNS REQUIRED BY LAW DURING THE TERM OF
7 SUPERVISION UNLESS AN EXTENSION OF TIME IS GRANTED BY THE
8 INTERNAL REVENUE SERVICE.

9 SIX, THE DEFENDANT SHALL NOT OPEN ANY NEW LINES OF CREDIT
10 NOR INCUR NEW DEBT WITHOUT THE PRIOR PERMISSION OF THE
11 PROBATION OFFICER.

12 SEVEN, THE DEFENDANT SHALL PROVIDE THE PROBATION OFFICER
13 WITH ACCESS TO ANY FINANCIAL INFORMATION, INCLUDING TAX
14 RETURNS, AND SHALL AUTHORIZE THE PROBATION OFFICER TO CONDUCT
15 CREDIT CHECKS AND OBTAIN COPIES OF INCOME TAX RETURNS.

16 EIGHT, THE DEFENDANT SHALL SUBMIT HIS PERSON, RESIDENCE,
17 OFFICE, VEHICLE, OR ANY PROPERTY UNDER HIS CONTROL TO A
18 SEARCH. SUCH A SEARCH SHALL BE CONDUCTED BY UNITED STATES
19 PROBATION OFFICER AT A REASONABLE TIME AND IN A REASONABLE
20 MANNER BASED UPON REASONABLE SUSPICION OF CONTRABAND OR
21 EVIDENCE OF A VIOLATION OF A CONDITION OF RELEASE. FAILURE TO
22 SUBMIT TO SUCH A SEARCH MAY BE GROUNDS FOR REVOCATION. THE
23 DEFENDANT SHALL WARN ANY RESIDENTS THAT THE PREMISES MAY BE
24 SUBJECT TO SEARCHES.

25 NINE, THE DEFENDANT SHALL COOPERATE IN THE COLLECTION OF

1 DNA AS DIRECTED BY THE PROBATION OFFICER.

2 TEN, THE DEFENDANT SHALL NOT OWN OR POSSESS ANY FIREARMS,
3 AMMUNITION, DESTRUCTIVE DEVICES, OR OTHER DANGEROUS WEAPONS.

4 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO THE
5 UNITED STATES A SPECIAL ASSESSMENT OF \$2,000 WHICH SHALL BE
6 DUE IMMEDIATELY. WHEN INCARCERATED, PAYMENT OF CRIMINAL
7 MONETARY PENALTIES ARE DUE DURING IMPRISONMENT AT THE RATE OF
8 NOT LESS THAN \$25 PER QUARTER, AND PAYMENT SHALL BE MADE
9 THROUGH THE BUREAU OF PRISON'S INMATE FINANCIAL RESPONSIBILITY
10 PROGRAM.

11 CRIMINAL MONETARY PAYMENTS SHALL BE MADE TO THE CLERK OF
12 THE UNITED STATES DISTRICT COURT, 450 GOLDEN GATE AVENUE,
13 P.O. BOX 36060 SAN FRANCISCO, CALIFORNIA 94102.

14 THE COURT FINDS THAT THE DEFENDANT DOES NOT HAVE THE
15 ABILITY TO PAY A FINE AND, THEREFORE, ORDERS THE IMPOSITION OF
16 ANY FINE TO BE WAIVED.

17 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY
18 RESTITUTION TOTALING \$511,667.82 WHICH SHALL BE DUE
19 IMMEDIATELY TO THE FOLLOWING VICTIMS IN THE FOLLOWING AMOUNTS:

20 DU PONT, \$367,679, STANTEC CONSULTING, \$52,356, THE LAW
21 OFFICES OF MICHAEL BROOK CARROLL, 58,881.82, ADECCO,
22 A-D-E-C-C-O ENGINEERING AND TECHNICAL \$32,571 FOR THE TOTAL
23 THAT I MENTIONED, 511,667.82.

24 MR. LIEW SHALL BE SOLELY RESPONSIBLE FOR THE RESTITUTION
25 TO STANTEC, THE LAW OFFICES OF MICHAEL CARROLL, AND ADECCO

1 ENGINEERING TECHNICAL. MR. LIEW SHALL BE JOINTLY AND
2 SEVERALLY LIABLE TO THE RESTITUTION PAID TO DU PONT.

3 THE COURT GIVES NOTICE THAT THIS CASE INVOLVES OTHER
4 DEFENDANTS WHO MAY BE HELD JOINTLY AND SEVERALLY LIABLE FOR
5 PAYMENT OF ALL OR PART OF THE RESTITUTION ORDERED TO DU PONT
6 HEREIN, AND MAY ORDER SUCH PAYMENT IN THE FUTURE. BUT SUCH
7 FUTURE ORDERS DO NOT EFFECT THE DEFENDANT'S RESPONSIBILITY FOR
8 THE FULL AMOUNT OF THE RESTITUTION OWED.

9 THE DEFENDANT SHALL FORFEIT THE DEFENDANT'S INTEREST IN
10 THE FOLLOWING PROPERTY TO THE UNITED STATES: A MONEY JUDGMENT
11 IN THE AMOUNT OF 27,829,893.67 WHICH SHALL BE JOINT AND
12 SEVERAL WITH USAPTI.

13 THE COURT GIVES NOTICE THIS CASE INVOLVES OTHER DEFENDANTS
14 WHO MAY BE HELD JOINTLY AND SEVERALLY LIABLE FOR THE PAYMENT
15 OF ALL OR PART OF THE MONEY JUDGMENT ORDERED HEREIN AND MAY
16 ORDER SUCH PAYMENT IN THE FUTURE, BUT SUCH FUTURE ORDERS DO
17 NOT EFFECT THE DEFENDANT'S RESPONSIBILITY FOR THE FULL AMOUNT
18 OF THE MONEY JUDGMENT OWED.

19 WHEN INCARCERATED, PAYMENT OF RESTITUTION IS DUE DURING
20 IMPRISONMENT AT THE RATE OF NOT LESS THAN \$25 PER QUARTER, AND
21 PAYMENT SHALL BE THROUGH THE BUREAU OF PRISONS INMATE
22 FINANCIAL RESPONSIBILITY PROGRAM. RESTITUTION PAYMENTS SHALL
23 BE MADE TO THE CLERK, U.S. DISTRICT COURT, ATTENTION FINANCIAL
24 UNIT, 450 GOLDEN GATE AVENUE, BOX 36060 SAN FRANCISCO,
25 CALIFORNIA 94102 AT A RATE OF NOT LESS THAN \$500 PER MONTH TO

1 BEGIN 60 DAYS AFTER RELEASE FROM CUSTODY.

2 MR. LIEW, I WANT TO ADVISE YOU AT THIS TIME OF YOUR RIGHT
3 TO APPEAL THE SENTENCE AND JURY VERDICT IN THIS CASE AND
4 JUDGMENT OF THE COURT. UNDER FEDERAL RULE OF APPELLATE
5 PROCEDURE 4(B), YOU MUST FILE A NOTICE OF APPEAL WITHIN 14
6 DAYS AFTER ENTRY OF JUDGMENT. IF YOU ARE UNABLE TO PAY THE
7 APPEAL COSTS, YOU HAVE THE RIGHT TO PERMISSION -- TO ASK THE
8 COURT PERMISSION TO APPEAL IN FORMA PAUPERIS.

9 I WANT TO NOW TURN TO THE SENTENCE OF USAPTI.

10 THE COURT INCORPORATES EVERYTHING THAT IT SAID WITH
11 RESPECT TO ITS 3553(A) ANALYSIS REGARDING TO MR. LIEW'S
12 SENTENCE INTO THE SENTENCE OF USAPTI BECAUSE I THINK
13 CORPORATIONS ACT THROUGH THEIR REPRESENTATIVES, AND MR. LIEW
14 WAS THE PRINCIPAL REPRESENTATIVE OF USAPTI. SO EVERYTHING I
15 SAID BEFORE I'M INCORPORATING INTO THE REASONS FOR THE
16 FOLLOWING SENTENCE WITH RESPECT TO USAPTI.

17 PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS THE
18 JUDGMENT OF THE COURT THAT USA PERFORMANCE TECHNOLOGY, INC.,
19 USAPTI, IS HEREBY PLACED ON PROBATION FOR FIVE YEARS.

20 WHILE ON PROBATION, USAPTI SHALL NOT COMMIT ANOTHER
21 FEDERAL, STATE, OR LOCAL CRIME. USAPTI SHALL PAY TO THE
22 UNITED STATES A FINE OF \$18,900,000, WHICH SHALL BE DUE
23 IMMEDIATELY. PAYMENT OF CRIMINAL MONETARY PAYMENTS SHALL BE
24 MADE TO THE CLERK, U.S. DISTRICT COURT, 450 GOLDEN GATE
25 AVENUE, BOX 36060 SAN FRANCISCO, CALIFORNIA 94102.

1 THE DEFENDANT USAPTI SHALL FORFEIT ITS INTEREST IN THE
2 FOLLOWING PROPERTY TO THE UNITED STATES: A MONEY JUDGMENT IN
3 THE AMOUNT OF \$27,829,893.67 WHICH SHALL BE JOINT AND SEVERAL
4 WITH WALTER LIEW.

5 THE COURT GIVES NOTICE THAT THIS CASE INVOLVES OTHER
6 DEFENDANTS WHO MAY BE HELD JOINTLY AND SEVERALLY LIABLE FOR
7 PAYMENT OF ALL OR PART OF THE MONEY JUDGMENT ORDERED HEREIN
8 AND MAY ORDER SUCH PAYMENT IN THE FUTURE BUT SUCH ORDERS DO
9 NOT EFFECT THE DEFENDANT'S RESPONSIBILITY FOR THE FULL AMOUNT
10 OF THE MONEY JUDGMENT OWED.

11 IT IS FURTHER ORDERED THAT USAPTI SHALL PAY TO THE UNITED
12 STATES A SPECIAL ASSESSMENT OF \$3600, WHICH SHALL BE DUE
13 IMMEDIATELY.

14 PAYMENT OF CRIMINAL MONETARY PENALTIES SHALL BE MADE TO
15 THE CLERK, U.S. DISTRICT COURT, 450 GOLDEN GATE AVENUE, BOX
16 36060 SAN FRANCISCO, CALIFORNIA 94102.

17 MR. LIEW, ON BEHALF OF USAPTI, I WANT TO ADVISE THAT
18 COMPANY OF ITS RIGHT TO APPEAL AND THE FEDERAL RULE OF
19 APPELLATE PROCEDURE 4(B), DEFENDANT MUST FILE A NOTICE OF
20 APPEAL WITHIN 14 DAYS AFTER ENTRY OF JUDGMENT. IF THE
21 DEFENDANT IS UNABLE TO PAY THE APPEAL COSTS, IT HAS THE RIGHT
22 TO REQUEST FOR PERMISSION TO APPEAL IN FORMA PAUPERIS.

23 ANYTHING FURTHER FROM THE GOVERNMENT?

24 **MR. HEMANN:** NO, YOUR HONOR.

25 **THE COURT:** ANYTHING FURTHER, MR. GASNER?

MR. GASNER: YOUR HONOR, MS. AGNOLUCCI WOULD LIKE TO
ADDRESS POTENTIAL RECOMMENDATION FOR PLACEMENT.

THE COURT: VERY WELL.

MS. AGNOLUCCI: VERY BRIEF. WE REQUESTED MR. LIEW BE ASSIGNED TO LOMPOC, WHICH HAS AN RDATP PROGRAM, AND THAT WOULD BE THE CORRECTIONAL PURPOSE OF THAT FACILITY. IN ADDITION, LOMPOC WOULD FACILITATE VISITS WITH HIS SON GIVEN ITS PROXIMITY TO THE EAST BAY.

THE COURT: THE COURT WILL SO RECOMMEND AND MAKE SURE IT IS INCORPORATED INTO THE JUDGMENT.

MS. AGNOLUCCI: THANK YOU, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MS. AGNOLUCCI: THE SECOND CHOICE THAT WE WOULD REQUEST IS SHERIDAN.

THE COURT: I WILL PUT THAT IN, BUT KNOWING THE WAY
THE BUREAU OF PRISONS OPERATES, I WILL MAKE A STRONG
RECOMMENDATION FOR HIS FIRST CHOICE, AND WE WILL PUT THE OTHER
ONE DOWN AS A SECOND CHOICE, BUT I WILL MAKE SURE THAT THEY
CAREFULLY CONSIDER THE COURT'S RECOMMENDATION.

MS. AGNOLUCCI: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH COUNSEL.

MR. HEMANN: THANK YOU, YOUR HONOR.

(PROCEEDINGS CONCLUDED AT 1:22 P.M.)

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3 **CERTIFICATE OF REPORTER**

4 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
5 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
6 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
7 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

11 WEDNESDAY, SEPTEMBER 24, 2014
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